Supreme Court, U.S.
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No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 199?

_____

ALLEN N. BRUNWASSER,

Petitioner

vs.

JOHN E. STEINER,

Respondent.

_____

PETITION FOR WRIT OF CERTIORARI
DIRECTED TO THE SUPERIOR COURT OF
PENNSYLVANIA AND THE
SUPREME COURT OF PENNSYLVANIA

_____

Allen N. Brunwasser,
Petitioner

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159 pp

QUESTIONS PRESENTED FOR REVIEW

I. DO THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATED PROHIBIT THE MAKING OF JUDICIAL DECISIONS INFLUENCED BY LIES ABOUT AND AD HOMINEM ATTACKS ON THE LOSER OR IS THE OUTCOME OF A CASE TO BE DECIDED LIKE A POLITICAL ELECTION OR CONTEST WHERE THIS TYPE OF CONDUCT IS AN ACCEPTED PART OF THE SCENE AND ANYTHING GOES?

II. DO FIRST AMENDMENT COURT ACCESS AND/OR FIFTH AND FOURTEENTH AMENDMENT SUBSTANTIVE AND/OR PROCEDURAL DUE PROCESS PROHIBIT WHAT HAS HAPPENED IN THIS CASE AND, IN PARTICULAR, THE OCTOBER 29, 1993 ORDER OF THE SUPREME COURT OF PENNSYLVANIA AND THE OCTOBER 18, 1993 AND NOVEMBER 19, 1993 ORDERS OF THE SUPERIOR COURT OF PENNSYLVANIA?

III. WHEN THE HIGHEST JUDICIAL COURT OF A STATE IS IN TURMOIL, SHOULD ITS ADJUDICATION STOP UNTIL THE PROBLEMS ARE RESOLVED?

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REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS

None of the orders involved have been published officially or unofficially in any report. They have been reproduced in type in the Appendix.

STATEMENT OF JURISDICTION

Jurisdiction is founded upon 28 U.S.C. 1257(3). The date of the sought to be reviewed Pennsylvania Supreme Court order is October 29, 1993. The date of the Superior Court order is November 19, 1993.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

All this material has been reproduced verbatim in the Appendix to this petition. The Federal Constitution are the First, Fifth and Fourteenth Amendments.

The Pennsylvania Constitution grants substantive rights in Article 1, Sections 1, 2, 9, 11, 12, 20, 25 and 26.

42 Pa. C.S.A. 5101(a) and the numerous rules cited in the Petition also grant substantive rights.

CONCISE STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

Allen N. Brunwasser was a tenant in Apartment 19D Gateway Towers, Pittsburgh, PA, since 1963. Robert S. Beauchamp, an Atlanta, Georgia lawyer who owned 10 other large high rise rental properties he had converted to condominiums, decided to do the same for Gateway Towers, a 27-floor high rise building with 13 tenants on each of Floors 4-26 and commercial tenants on the other floors.

After investigation of material facts and law, Brunwasser filed a suit to stop Beauchamp, local government and other participating parties from consummating the project and another suit to prevent what he claimed to be illegal zoning changes without which the project could not even begin.

Some of the largest Pittsburgh law firms entered appearances for the defense. The cases were settled in 1983. Brunwasser was to have his suits dismissed with prejudice, which he did. Beauchamp and Gateway Capital, Inc., in exchange, agreed not to sell Apartment 19D without previous notice to Brunwasser. In addition, Brunwasser was to be given a five-year lease with a five-year option to renew and an agreed upon rental not payable until specified repairs were made. Since Brunwasser exercised the option, he had, under the settlement, a ten-year lease ending March 31, 1994. The repairs were never made. However, Brunwasser has posted in court $272,000 in cash

to secure any rentals eventually determined to be due by a jury.

Beauchamp and Gateway Capital, Inc. then conveyed Gateway Towers to Commonwealth Fort Associates, which was to continue with the conversion to condominium. However, the apartments did not sell so a public auction was advertised. The auctioneer sent Brunwasser an October 7, 1987 letter assuring him 19D would not be part of the auction and it was not offered for sale.

But secretly and in direct violation of the agreement not to sell 19D without previous notice to Brunwasser, 19D was sold in August 1988 to John E. Steiner, Respondent, to whom any rents due were also assigned.

Steiner, around August 1988, sued to evict Brunwasser and filed a second suit to collect allegedly due rentals. (6a-27a, 113a-175a, 3b, 207a) On February 3, 1989, Judge R. Stanton Wettick, Jr., entered an ex-parte obtained order stopping all discovery and subsequently,

sua sponte, moved both cases, which he joined for trial, to the head of the November 1989 trial list (457a, 525a, docket entry No. 19, 181b).

The cases were heard in a long non-jury trial by then Judge Anthony J. Martin of the Fifth Pennsylvania District in Pittsburgh (614a-985a, plus unprinted transcript). Steiner (667a) specifically advised he was not pursuing any motion for judgment on the pleadings and Judge Martin also granted Brunwasser's motions to amend them to correct all pleading problems.

At the trial, Brunwasser's undenied, unimpeached and unshaken oral and documented evidence proved he had settled the litigation with Beauchamp and Gateway Capital, Inc., which had conveyed to Commonwealth Fort Associates which was Steiner's grantor (736a-749a, 756a-762a, 767a-769a, 772a-773a, 776a-748a, 791a-793a, 800a-804a, 914a).

Brunwasser said the settlement included a

lease, which, if renewed as authorized by the option, would terminate on March 31, 1994 (745a-747a) and that he had exercised the option (779a).

He also said the settlement provided that no rent was due until specified repairs were first made (745a) and that 19D was not to be sold (758a, 760a-762a).

He also said the conveyance from Gateway Capital, Inc. and Commonwealth Fort Associates, in their respective Paragraphs 4, withheld from the transfer any rights of the Apartment 19D occupant, who, as everyone knew, was Brunwasser (226b, 226b1, 15a, 23a).

On December 20, 1989, Judge Martin ruled that Brunwasser had a lease which terminated March 31, 1994 (40a-57a) and that no rent was due until specified repairs were made, but also ordered Brunwasser was to pay the rent only if the repairs were made in 120 days after his decision (54a, 57a). Since the repairs were never made, no rent was due.

Post trial motions of Steiner and Brunwasser (77a-80a, 173b, Entry No. 82, 23c-31c) were all dismissed on December 5, 1990, by Judge Judith L.A. Friedman, who was appointed to decide them since Judge Martin had been defeated for election (84a-99a, docket entry No. 32, 183b).

Both Steiner and Brunwasser appealed to the Superior Court of Pennsylvania (Docket Entry No. 84). Steiner's appeal became 71 and 72 Pgh. 91 and Brunwasser's No. 718 and 1211 Pgh. 91. The Fifth Judicial Pennsylvania District cases were numbered 10271 of 1988 and G.D. 88-17478.

The trial court clerk did not forward the record to the Superior Court because numerous papers had been lost (177b-197b). Steiner's counsel then began an unjustified ad hominem attack on Judges Martin and Friedman plus Brunwasser, which attack continued before the Superior and Supreme Courts which not only refused to strike the material but evaluated it

in its adverse to Brunwasser decisions. The details of this will be discussed later in this petition.

What record remained was eventually forwarded to the Superior Court by direction of its clerk (161b) and order of Judge Wettick (186b, Docket Entry No. 48).

Steiner's statement of issues to be raised in the Superior Court appeal accuse Judge Friedman of not reading the trial transcript and also, without record support and contrary to the record, attack Brunwasser, trial court Judges Friedman, Martin and Wettick and then President Judge Zavarella. The details were included in Brunwasser's proposed 79-page certiorari petition but deleted here as are many other details to reduce pagination to 65 as mandated by Justice Souter's December 29, 1993 order.

The ad hominem attack continued at the panel oral argument and visibly impressed the three panel judges. Included were unsupported

by the record charges that Brunwasser was a "liar", never paid rent, had lost on the merits in the trial court, where all participating judges had perverted justice as a charity to Brunwasser and to help him personally and based on terrorism and blackmail and being psychotic.

Brunwasser's April 26, 1992 motion and his August 9, 1989 trial court brief and November 26, 1991 Superior Court motion to strike Steiner's reproduced record were all denied on May 5, 1982 without signed order or opinion to remove the above material on which Steiner's counsel falsely expanded at oral April 22, 1992 argument where he said Brunwasser "had terrorized Judge Martin" and dismiss Steiner's appeals as a sanction was denied by the Superior Court on May 5, 1992, without signed order or opinion or the evidentiary hearing which Brunwasser requested to show all the above was untrue and contrary to the record.

On November 17, 1989, Steiner's counsel filed and mailed to each Supreme Court Justice

a petition asking it assume plenary King's Bench jurisdiction. The petition's only purpose was a vicious ad hominem attack on Judge Martin and Brunwasser. It was denied at 111 W.D. All. Dkt. 1989.

At the April 1992 oral argument before the Superior Court panel, Steiner's counsel devoted almost his entire allowed time to an ad hominem and false attack on Brunwasser. Unfortunately, Pennsylvania appeal courts do not record oral arguments.

On July 2, 1992, the three judge argument panel reversed the trial court. It entered judgment on the pleadings even though this issue had been specifically not pressed by Steiner (667a and September 1, 1989 Steiner letter to Judge Martin), and dismissed sua sponte Brunwasser's appeal for failure to file ordered Pa. R.C.P. 1529(b) reasons for appeal when he had filed it. The trial judge admitted in open court on July 8, 1992, receiving it and addressed the issues in her opinion and no one

had raised this issue in the trial court or on appeal. The July 2, 1992 opinion has been attached to this petition.

On July 16, 1992, Brunwasser filed and served a motion for reargument which detailed why the July 2, 1992 decision was erroneous and had overruled all published and establishes law. It also (Page 11, Paragraph 2) argued the panel was "swayed by Steiner counsel's false argument".

On April 26, 1992, Brunwasser filed and served a "Motion to Dismiss Appeals of John E. Steiner". On Pages 1-9 he argued with factual record specifics Steiner's false argument, from his observation of two of the panel judges, caused the July 2, 1992 result and asked it be set aside as a sanction. He also requested (Pages 10-11) that reargument to correct this deceit be recorded and the falseness violated federal due process and first amendment court access.

On May 5, 1992, the motion was denied "Per

Curiam" in an unsigned order with no opinion.

On July 14, 1992, Steiner filed a "Motion for Reconsideration as to Certain Issues Raised on Appeal". This paper continued the vicious ad hominem attack. It contained non-record and untruthful charges of terrorism of judges, lawyers and the public plus government lies, plus "tax evasion" (Page 5) and subversion of the legal system. It also attacked Judge Friedman. Brunwasser's July 21, 1992 motion to strike this improper motion was denied without opinion by the Superior Court on August 5, 1992.

On September 11, 1992, the Superior Court denied Brunwasser's August 10, 1992 motion for reargument and full court review, which continued to press the above issues. Brunwasser's August 3, 1992 motion to apply an April 20, 1992 published opinion of Panel Judge Hudock at 607 A.2d 271, which ignored omissions which were deemed fatal in Brunwasser's 781 and 1211 Pgh. 92 appeals was denied without

opinion. On October 9, 1992, Brunwasser filed and served a petition for discretionary review in the Pennsylvania Supreme Court at 542 W.D. All. Dkt. 1992. This petition pressed what had been raised in lower courts.

On October 21, 1992, Brunwasser received Steiner's "Response to Petition for Allowance of Appeal". This paper continued the ad hominem attack on Brunwasser, contained allegations not supported by the record and alleged "Brunwasser and Judge Friedman violated the Rules of Professional Conduct and the Rules of Judicial Conduct" (Page 5). Brunwasser's November 2, 1992 Motion to Strike it was denied without opinion on August 31, 1992. The motion discussed how the Superior Court on at least two admitted ex parte occasions had improperly influenced Judge Friedman to rule against Brunwasser in re post July 2, 1992 matters. The Superior Court's order of September 10, 1992, warned Judge Friedman that "noncompliance with this order by the lower court shall result

in certification of the matter to the Judicial Review Board". It also ordered her to direct the clerk of the trial court to issue a writ to evict Brunwasser immediately, vacated the July 8, 1992 stay and directed a hearing to set a higher bond going back to August 1, 1983, which included years foreclosed by the statute of limitations.

As a result, Judge Friedman raised Brunwasser's $32,400 supersedeas cash bond to $237,000 cash after giving him five minutes for his burden of proof testimony and Steiner over one hour and without admissible evidence from Steiner.

From that time on, Judge Friedman was unreceptive to Brunwasser's positions and has finally recused on his motion and also sua sponte from hearing any case in which he participates as counsel or party.

On September 22, 1992, in the trial court on the day Judge Friedman had scheduled to reset the supersedeas bond as ordered on

September 10, 1992, by the Superior Court, Steiner continued the ad hominem against Brunwasser attack in what he called a "Brief for Use With Hearing on Supersedeas". The non-record untruthful allegations also said Brunwasser's Genghis Kahn destroy everything conduct (Page 7) was similar to the "Mendelin Cartel" execution of Judges in Columbia (Pages 5, 7) and accused him of deceit and intimidation (Pages 3-4).

On September 15, 1992, as directed by the Superior Court Order of September 10, 1992, Brunwasser requested Judge Friedman to schedule a hearing to set a supersedeas appeal bond within the directed five days.

She set it for September 22, 1992, at 3:30 p.m. and said "it will have to be a concise hearing" (T. 5) where Brunwasser had the burden of proof (T. 6) "limited" to "15 minutes each" (T. 7). When advised the sheriff had already served a writ for possession as directed by her ex parte presented to her by Steiner September

17, 1992 order, she responded (T. 7), "I was directed to do so by the Superior Court forthwith under an inexplicable threat of discipline if I failed to comply. I have already complained to the Superior Court about that threat and its total inapplicability."

She declined to stop the eviction (T. 8) pending her decision and said, "You ask the Superior Court". On September 18, 1992, Brunwasser filed an emergency motion asking the Superior Court to stay his eviction set for September 25, 1993, at 11:00 a.m. until Judge Friedman set bond. He had already filed an August 11, 1992 emergency motion for reargument which, inter alia, stated the August 18, 1992 Steiner motion which resulted in the September 10, 1992 order had not been served on him. On September 11, 1992, reargument had been denied by a "Per Curiam" unsigned order. It was only after Brunwasser filed a motion asking what happened to his September 18, 1992 emergency motion that it was denied on November 30, 1992,

by which time $240,000 cash equivalent had already been posted, at which time the same order denied reargument of the September 10, 1992 order. In his August 18, 1992 ex parte motion, Steiner accused Brunwasser of "intimidation" of Judge Friedman and the court's clerk and included a copy, as Exhibit B, or the ad hominem July 14, 1992 above described motion.

Brunwasser, on September 14, 1992, had filed a motion for leave to respond to the September 10, 1992 ex parte obtained order and for panel review if made by one judge and reargument en banc if made by a panel. The motion was denied by a per curiam unsigned order on September 22, 1992.

The $237,000 bond order was filed late in the afternoon of September 23, 1992, but Brunwasser was able to post the bond with help from two federal reserve officers and cooperation of Western Pennsylvania Bank.

On November 5, 1992, Steiner filed another

ad hominem attack on Brunwasser in the trial court. On November 12, 1992, Brunwasser filed a motion to expunge it and physically return it to Mr. Nernberg. Brunwasser's motion alleged previous ad hominem attacks had resulted in the Superior Court July 2, 1992 adverse to him decision.

On November 9, 1992, Brunwasser filed a motion to amend his allocatur petition by citing recent Supreme and Superior Court published cases which reached a result contrary to the July 2, 1992 panel decision.

On December 23, 1992, Steiner had sent to the Supreme Court at No. 542 W.D. Allocatur Docket 92 a letter accusing Brunwasser of "practice by trick". Brunwasser filed a January 5, 1993 response denying what the letter said and suggesting Steiner's counsel should evaluate his own for worse conduct discussed in Ludmer v. Maurice A. Nernberg, Jr., 520 Pa. 218, 553 A.2d 924, and the subsequent $25,000 actual damages plus $50,000

punitive damages awarded around November 20, 1992, at G.D. 84-11881 and reported on Page 7 of the December 7, 1992 Pittsburgh Legal Journal.

On March 22, 1993, Steiner filed another ad hominem attack on Brunwasser in the Superior Court. Brunwasser filed a March 31, 1993 answer claiming it to be false, plus a request the July 2, 1992 panel order be revoked as a sanction for falseness and improper ad hominem attack.

On April 29, 1993, the Pennsylvania Supreme Court denied review in an unsigned "Per Curiam" order which appears in the Appendix.

On April 30, 1993, before he received notice of the April 29, 1993 order at No. 542 W.D. Allocatur Docket 1992, Brunwasser filed a second allocatur petition, which was docketed at No. 222 W.D. Allocatur Docket 1993 and involved post July 2, 1992 Superior Court activities. It requested the Pennsylvania Supreme Court take King's Bench plenary

jurisdiction of all pending Nernberg-Brunwasser-Steiner litigation and presented detailed reasons why this should be done and was founded on the Superior Court's April 5, 1993 and April 6, 1993 orders.

It cited recent decisions contrary to the July 2, 1992 panel order, including many decided by the panel members themselves and argued Brunwasser was receiving special treatment through unusual procedures so that the Superior Court could reach a decision not otherwise available.

It also objected to Superior Court post July 2, 1992 orders entered without jurisdiction and/or lack of notice, non-final impact of said Ludmer v. Nernberg, acting when no appeal was pending, assuming King's Bench Authority it did not possess, exercising undue influence on the trial court, the supersedeas bond procedures, the ad hominem attacks and Steiner falsehoods, decisions made without giving Brunwasser an opportunity to answer, use

of non-precedental unpublished opinions to reach results contrary to law and applicable to one case only, judicial legislating, cited Section 1 of the Fourteenth Amendment, discussed other pending post July 2, 1992 Steiner and Nernberg cases against Brunwasser, cited case where Mr. Nernberg was given favorable treatment by Judge Hudock on an issue similar to that decided July 2, 1992, adversely to Brunwasser, protested delegation of judicial authority to short term, underpaid law clerks and requested fair and equal treatment.

On May 5, 1993, Brunwasser filed and served a motion for rehearing in the Pennsylvania Supreme Court at No. 542 W.D. Allocatur Docket 1992. It raised event which occurred after the October 9, 1992 original allocatur filing and raised "Disruption caused by the disciplinary problem involving Justice Larsen and his criminal charges against Justices Cappy and Zappala and their impact on the proper and/or mandated administration of

justice" and cited Justice Larsen's disciplinary case filed October 15, 1992 at ___ Pa. ___, 616 A.2d 529, 558 (published January 15, 1993, in A.2d) plus media coverage of a grand jury investigation about all three plus known attempts of influence attempts in other cases, including Judge Tamilia. Justice Larsen's racial attack on Chief Justice Nix, whom he attempted to defeat for retention, the suicide of former Supreme Court Chief Clerk Rice "who could not stand the pressures presented to him by the different justices--", the estrangement between Justices Larsen and Flaherty, that justices no longer sit together in the court conference room, his inability to find out which justice made the April 29, 1993 decision and the general effect of the above on the general public impression of justice, especially if Justices Larsen, Cappy or Zappala decided his case.

He also presented the issue of unelected, part-time, low-paid law school clerks who

practiced law when the Pennsylvania Constitution prohibits justices from practice and mandates they be elected and work full time, and how this impacts on state and federal constitutional constraints. The petition cited federal published decisions and also relied on "federal and state substantive and procedural due process". U.S. Supreme Court Rule 7 prohibits practicing law clerks was also cited. The clerks, their salaries and dates when first hired plus some of the media releases were attached.

It also raised Brunwasser's special treatment prohibited by state and/or federal constitutions and the ad hominem attacks and requested No. 222 be joined with No. 542, the above to be sufficient to vacate the April 29, 1993 and July 2, 1992 decisions and, if denied, to retain the record and the mandate until he could file his promised U.S. Supreme Court certiorari petition.

Steiner's response, received May 12, 1993,

was confined to a continuation of his ad hominem attack on Brunwasser and contained a photo of his July 14, 1992 ad hominem attack. It requested counsel fees and "the bonds posted by Brunwasser be immediately forfeited and paid over to John Steiner.

On May 11, 1993, Brunwasser filed and served a No. 542 W.D. Allocatur Docket 1992 "Petition for Allowance to Take Discovery", which cited Supreme and Superior Court published cases, which barred what happened to him and requested leave to take discovery of July 2, 1992 panel judges and clerks who processed his "unique" case "in order to ascertain if any other prohibited factor caused the decision".

He cited federal authority (American Safety Table Co. v. Singer Sewing Machine Co., 1948, C.A. 3, 169 F.2d 514, 518 and cases contained therein) and listed other improper influence cases of which he knew and described the conduct of the judges involved and cited

U.S. Supreme cases in re the impact of having no state remedy.

Steiner's May 17, 1993 "response" was another ad hominem attack, which asserted, without a word of back up fact, that Brunwasser accumulated over $4,500,000 of his personal wealth "by abusing the legal process" and "greed and a quest for something for nothing" (Page 4).

On May 17, 1993, Brunwasser filed and served a "Motion to Strike Response of John E. Steiner to Petitioner's Application for Reconsideration". Brunwasser offered to factually explain and refute this attack if the court wanted him to do so. He also cited cases in re this case being decided contrary to all published law to date and included Judge Friedman's prediction the $237,000 bond would cover the two-year estimated appeal period after it was posted. On May 25, 1993, Steiner had Mr. Nernberg send a letter advising the Supreme Court that no answer would be filed.

On May 28, 1993, Brunwasser filed and served a motion at No. 542 of 1992 "to require Respondent and his counsel give the details of ad hominem attacks and specify how each item is relevant to these proceedings".

It notices Steiner had sued Brunwasser, the July 2, 1992 decision was contrary to all published law, good for this train only (dissent of Mr. Justice Roberts in 321 U.S. 649, 669, 64 S.Ct. 757, 768) and cited new cases, some of which were decided by July 2, 1992 panel members, recalled the oral argument, Mr. Nernberg's personal attack, claimed the ad hominem attack caused the July 2, 1992 result, objected to Steiner-Nernberg April 30, 1992, August 18, 1992, October 20, 1992, May 10, 1993, and May 13, 1993 ad hominem attacks.

He reasserted his May 11, 1993 improper influence discovery request and cited EC7-38, EC7-1, loss of "rational courtesy and collegiality", cited the 7th Circuit Court of Appeals September 14, 1992 profession rules to

correct it and quoted from them verbatim, mentioned the new Pennsylvania mandate of five hours ethics instructions each year to retain a lawyer's license, observed Mr. Nernberg did not factually deny his May 11, 1993 Motion to Strike.

On May 21, 1993, Brunwasser filed at No. 542 of 1992 and served his "Motion for Summary Reversal of July 2, 1992 Order of Superior Court and to Strike Respondent's Response of May 17, 1993", which alleged "the simple issue before the court" is "Can Mr. Brunwasser stay in a condominium unit for 15 years and not pay rent". The underlining was by Mr. Nernberg.

Brunwasser then detailed trial court unimpeached and undenied evidence, which resulted in him prevailing there before two judges who ruled his agreement with Robert Beauchamp, a Steiner title predecessor, allowed his conduct and that he had posted $269,000 in cash to protest Steiner's rent claim in the event he established any rental rights.

Brunwasser argued if the rent issue was the sole case issue, he should receive judgment in his favor. He also requested relief from the continued ad hominem attacks unsupported by fact or verification an cited U.S. Supreme Court cases that provided for this protection and media photographs discussing ad hominem and illegal fixing allegedly committed by three of the Pennsylvania Supreme Court's sitting justices.

On July 21, 1993, the Supreme Court denied all relief at No. 542 W.D. Allocatur Docket 1992. No. 222 W.D. Allocatur Docket 1993 remained undecided.

On July 30, 1993, at No. 542 of 1992, Brunwasser filed and served a "Petition to Vacate Orders of July 20, 1993, and April 29, 1993, in the Supreme Court, and Orders of July 2, 1992, and September 11, 1992, in the Superior Court of Pennsylvania -- and to determine if any court had jurisdiction because of John E. Steiner's failure to join an

indispensable party plaintiff and/or he is not the real party in interest in this litigation", which gave, what he suggested, facts that established a prima facia case to justify this result plus U.S. and Pennsylvania Supreme Court and federal decisions giving this result.

Steiner's August 12, 1993 response was another ad hominem attack, including, without facts, his bad "reputation in the community" and an argument "one cannot wrestle with a skunk and not smell afterwards". He asked, inter alia, "that Mr. Brunwasser file no further action concerning or related to Mr. Steiner without first obtaining an order of this court permitting the same" and photographed a copy of Brunwasser's letter requesting the mandate, if adverse, be held pending his intention to seek U.S. Supreme Court review.

On August 19, 1993, Brunwasser filed and served a reply to Steiner's August 12, 1993 material. A case where Panel Judge Hester had

ex parte attempted to influence the Superior Court in a case which involved him and Panel Judge Tamilia had met ex parte with an interested party whose case he was to decide were discussed.

On September 24, 1993, Steiner filed at No. 542 of 1992 and in the Superior Court a "Motion for further relief for enforcement of the order of the Superior Court of April 5, 1993, which continued the ad hominem attack and requesting he be immediately evicted.

On October 18, 1993, the Superior Court gratuitously reprimanded unnamed trial court judges and Brunwasser but sent a copy of the order to Judge Friedman. Brunwasser's attempts to have this non-issue reprimand of himself and the judges were unsuccessful. On October 27, 1993, Steiner's counsel filed the October 18, 1993 order in the Supreme Court of Pennsylvania at No. 542 W.D. All. Dkt. 1992.

When Judge Friedman protested her reprimand to Superior Court President Judge

Rowley and the Chief Justice of Pennsylvania, Steiner's counsel used this as a further opportunity to send an ad hominem attack on Brunwasser and trial court judges in the form of a responding to Judge Friedman letter. Brunwasser's October 29, 1993 protest and request for an evidentiary hearing prove it was returned to him by P.J. Rowley's secretary, who advised he would not read it.

On November 4, 1993, the Supreme Court clerk returned this October 29, 1993 filing to him. The court is respectfully requested to take judicial notice that Mr. Steiner does not have his money allocated to Apartment 19D. Mortgage Book Volume 10020, Page 88, in the Allegheny County, Pennsylvania, Recorder's Office clearly discloses he obtained $84,000 from Horizon Financial, F.A. on October 21, 1988, which was about seven weeks after he allegedly purchased it for $55,000.

On November 17, 1993, Steiner filed a "Petition for Emergency Relief in the Superior

Court. Brunwasser received it November 18, 1993. It contained no facts of emergency but asked Sheriff Eugene Coon "execute the writ of possession against the appellee even though the Sheriff was not a party to the Steiner-Brunwasser litigation and did not want to risk what he did might offend Brunwasser's action in the United States District Court for the Western District of Pennsylvania filed at C.A. 93-1819 and requesting he be ordered not to execute. See, for example, Marshall v. Holmes, Sheriff, 1891, 12 S.Ct. 62, 141 U.S. 589 (Sheriff can be enjoined in district court); United States v. Cold Storage Corp., City of Phila., 1908, 431 Pa. 411, 246 A.2d 386, 388 (non-party not bound by previous judgment); Lawther v. Com., et al, 1943, 347 Pa. 565, 33 A.2d 432, 434 (accord).

Pa. R.A.P. 121(b) gives Brunwasser 14 days to answer after service so Brunwasser advised Ed, a Superior Court clerk, that he intended to answer. Ed, in charge of this matter, promised

Brunwasser the petition would not leave his office or be forwarded to Central Legal Staff or the court for 14 days so Brunwasser could file an answer, but he broke his promise

At 4:00 p.m. on November 19, 1993, a message was left at the switchboard of Gateway Towers that an order had been entered. When Brunwasser returned home from court about 4:40 p.m., he received the message and called Superior Court, where a clerk advised a "Per Curiam" unsigned order had arrived from some undisclosed source ordering the Sheriff to evict him "forthwith". He could not obtain a copy of the order until Monday, November 22, 1993, when court opened.

Brunwasser is without a remedy because the October 29, 1993 Supreme Court of Pennsylvania order bars filing any papers there so the scenario violates due process and court access in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution.

Justice Larsen and his entire staff were

suspended by his fellow justices on October 28, 1993, by summary action. Brunwasser believes this case was being decided by Justice Larsen as an in turn rotating judge. If he decided to issue the October 29, 1993 order before suspension and suffered the problems, psychologically and mentally and judicially which caused his suspension, he should not have decided the case. If he did not decide it and the October 29, 1993 order was entered to get rid of the case in order not to begin again or decided by a part-time clerk, there may be a First, Fifth and Fourteenth Amendment due process or court access violation.

Brunwasser has no procedure available to investigate this especially since he is barred by the October 29, 1993 order.

If the removal of Justice Larsen turns out to be improper due to failure of proof, Brunwasser has an absolute substantive right to have him participate in the October 29, 1993 decision under the above, First, Fifth and

Fourteenth Amendments and the announced Supreme Court of Pennsylvania Supreme Court adjudication rules. McCormick's Contested Election, 1924, 281 Pa. 280, 284, 127 A. 78.

The writ issued November 8, 1993, directs "You are directed to levy upon any property of Allen N. Brunwasser and sell his -- interest therein." Steiner has no money judgment but service of the writ will impound Brunwasser's property so he can't remove it and effectively end his career as an attorney and deprive him of his personal property necessary to live and function, all in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution, their due process and court access mandates. The October 29, 1993 order also deprives him of his absolute right to appeal under Article V, Section 9 of the Pennsylvania Constitution plus its Article 1, Section 11 right to court access - both substantive rights.

On November 22, 1993, Petitioner

personally went to the Grant Building Office of the Superior Court Clerk to obtain the said November 19, 1993 order. He was advised by the staff that as soon as it appeared in the electronic mail, Mr. Nernberg's office was advised of it by phone and given a certified copy at once. Another copy of the order was immediately taken to the Clerk of the Trial Court so it could be entered in the docket. The clerk responsible for this was immediately recruited to take the certified copy from the City-County Building where the Superior Court operated to the fifth floor of the courthouse for immediate docket entry. When Petitioner asked from where the E-Mail came, he was advised no one could tell for sure, but it might have come from the July 2, 1992 panel. When Petitioner asked to see the computer printout, which would have a code identity of the sender, he was told the computer is purged as soon as a note of the message is made and no note is made of who sent it and there might not

even been a code identification of the transmitter.

As soon as this was done, a writ of possession and execution was issued and sent to the Sheriff for immediate action. Petitioner has been an active practitioner since 1950 and knows of no other case which was given this type of special service. In addition, Pa. R.A.P. 123(e) gives him an absolute substantive right to request en banc review before the order is filed in the trial court. Petitioner has thus been deprived by the Superior Court of the substantive and procedural due process right to answer Steiner's so-called "emergency" motion and the right to en banc review of the November 19, 1993 order. The October 29, 1993 Supreme Court of Pennsylvania order prevents any request for relief there.

As of the time this petition is being dictated (November 26, 1993 at 3:40 a.m.), Petitioner is still in possession of 19D because the Sheriff has not finally decided if

Petitioner's papers filed in the United States District Court for the Western District of Pennsylvania at C.A. 93-1819 and C.A. 93-1934 are at least a temporary bar. However, he can decide at any time to evict Petitioner and impound his personal property. This will effectively render him homeless and terminate the facilities for him to practice law and subject him to both possible disciplinary and damage responses from his injured clients.

It may also moot this case and deprive him of all remedy to do anything about it.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI

I. DO THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATED PROHIBIT THE MAKING OF JUDICIAL DECISIONS INFLUENCED BY LIES ABOUT AND AD HOMINEM ATTACKS ON THE LOSER OR IS THE OUTCOME OF A CASE TO BE DECIDED LIKE A POLITICAL ELECTION OR CONTEST WHERE THIS TYPE OF CONDUCT IS AN ACCEPTED PART OF THE SCENE AND ANYTHING GOES?

A. Petitioner respectfully suggests a fair inference could easily lead to the conclusion that what has happened in this unique case where all past and present Pennsylvania law, including published decisions on the same issues by various panel members who decided this case, was overruled in a non-precedental, unpublished Superior Court decision and the Pennsylvania Supreme Court eyes and ears withdrawn by its never before done October 29, 1993 order, had to be caused or greatly influenced by the detailed falsehoods and ad hominem attacks made upon him by Respondent and his counsel.

B. Anyone who reads a newspaper, listens to the radio or watches television could not help but observe that the candidates use almost all of their time exposing alleged misconduct of their opponents, which, even if true, would have no impact on the ability of that candidate to serve and little time discussing the issues for which the contestants stand.

C. Petitioner also respectfully suggests the same type of conduct is becoming or has become the standard in the practice of law and that the professionalism and collegiality, which was the without protest standard in 1950 when Petitioner was admitted, no longer exists.

D. Every litigant has an absolute right to a fair decision-maker unexposed to irrelevant material. U.S. v. Gomez, 1989, 490 U.S. 858, 876, 109 S.Ct. 2237, 2248 ("right to an impartial adjudicator be it judge or jury" is guaranteed and taking it away can never be harmless error); Concrete Pipe and Prod. v. Const. Laborers Pen. Tr., 1993, ___ U.S. ___, 113 S.Ct. 2264, 2277 (right to unbiased judge and appearance of justice discussed); Wheat v. U.S., 1988, 486 U.S. 153, 160, 108 S.Ct. 1692, 1698 (proceedings must appear fair to those who observe them).

E. Petitioner respectfully suggests the only reason for Steiner to file the October 18, 1993 Superior Court order with its adverse and

uncalled for comments about trial court judges and Petitioner in the Pennsylvania Supreme Court was to generate prejudice and irrelevant factors, and the success of this strategy is evidenced by the October 29, 1993 order. U.S. ex rel Accardi v. Shaughnessy, 1954, 347 U.S. 260, 265-267, 74 S.Ct. 499, 502-3 (subtle persuasion of judicial type subordinates by Attorney General condemned); White v. Md., 1963, 373 U.S. 59, 83 S.Ct. 1050 (judge's statement he was not influenced by prejudicial material rejected).

F. The record in this case clearly discloses Petitioner's constant motions to reject what he said were lies and the ad hominem attacks were overruled and that by retaining this material which went beyond what Judges Martin and Friedman had done in the trial court, it must have been evaluated in reaching the unique one case only results of July 2, 1992 and thereafter. In addition, the appeal courts refused to grant Petitioner's

requests for an evidentiary hearing to explore if what Steiner and his counsel filed was true. Witherow v. Larkin, 1975, 95 S.Ct. 1456, 1462, 421 U.S. 35, 53 (when adjudicator goes dehors record, harmed party has right to evidentiary hearing to explain and cross-examine).

G. Until this case, ad hominem attacks were condemned in both Pennsylvania and federal courts. Keefer v. McGuinnis, 1950, 365 Pa. 601, 70 A.2d 410; Supreme Council of the Royal Arcanum v. Green, 1914, 237 U.S. 531, 546, 35 S.Ct. 724, 729 citing Green v. Elbert, 137 U.S. 615, 11 S.Ct. 188; Welborne-Karpen Dryer Co. v. Cutler Dry Kln. Co., Inc., 1923, C.A. 2, 292 F.2d 861, 862. Cases are sparse because that type of conduct was universally condemned and lawyers did not try it.

H. Lies, which amounted to deceit, have also been sanctioned by taking from the liar whatever benefit was so obtained. USA v. The Shotwell Mfg. Co., 1957, 355 U.S. 245, 78 S.Ct. 245; Henry v. Miss., 1965, 85 S.Ct. 564, 570,

379 U.S. 443, 452 (Shotwell rule applied to state courts); Hazel-Atlas Glass Co. v. Hartford Empire Co., 1944, 322 U.S. 231, 64 S.Ct. 997; Chambers v. Nasco, 1991, ___ U.S. ___, 11 S.Ct. 2123, 2131-2133; Petition of Cianfrani, 1976, 467 Pa. 491, 159 A.2d 386; Virgin Islands H.A. v. David, 1987, C.A. 3, 823 F.2d 764 and cases three collected; McCoy v. Court of Appeals of Wisconsin, 1988, 486 U.S. 429, 435-442, 108 S.Ct 1900-1903 (condor plus duty to disclose discussed; failure to disclose equals affirmative misrepresentation); U.S. v. Shaffer Equipment Co., S.D.W.Va. 1992, 796 F.Supp. 938, 952; Bowning-Ferris Industries, Inc. v. Kelko Disposal, Inc., 1989, 492 U.S. 257, 109 S.Ct. 2909, 2927 (two dissenting justices dissenting opinion discusses history of penalty for false swearing).

E. What is accepted conduct in the political, executive and legislative arena has never been allowed in the judicial. California Motor Trans. Co. v. Trucking Unlimited, 1972,

404 U.S. 508, 510, 92 S.Ct. 609, 611; Agresta v. City of Phila., E.D.Pa. 1992, 801 F. Supp. 1464, 1472; Owens v. Beard, 1993, M.D. Pa., 829 F.Supp. 736, 738-9 (substantive and procedural due process explained. U.S. Supreme Court cases cited); Edmondson and Gallagher v. Alban Towers Tenants, 1993, D.D.C., 829 F.Supp. 420, 426-7 (Noerr-Pennyton Doctrine, 365 U.S. 127, 81 S.Ct. 523; 381 U.S. 657, 85 S.Ct. 1585, explained).

F. Representative cases and rules discussing ad hominem attacks and other issues presented here are: Bufford v. Bowan Companies, Inc., June 16, 1993, C.A. 5, 994 F.2d 155 (new trial granted when defendant's lawyer tells jury Plaintiff has a fake case; court has duty to stop it; other cases cited); Harmilen v. Muligan, 1990, ___ U.S. ___, 110 S.Ct. 337 (party who includes dehors record material in his brief ordered to reprint it); New Rule 28(b) prohibiting ad hominem attacks in briefs (No. 30 F.2d advance sheets at

CCCXXV, 1993); Missouri v. Jenkins, 1990, 110 S.Ct. 1651, 1652, ___ U.S. ___ ("Regular adherence to published rules of procedure best promotes the principles of fairness, stability, and uniformity that those rules are designed to advance"); Schvelet v. Roman Asphalt Corp., July 26, 1993, S.D.N.Y., 837 F.Supp. 247, 254, N.10 (attorney's desire to convince client he is vigorously pursuing his claim does not justify ad hominem attacks in litigation papers); In re Cordova, June 30, 1993, C.A. 1, 996 F.2d 1334 ("abusive and disrespectful language against judges and opposing counsel" causes disbarment); U.S. v. Mendoza-Lopez, 1987, ___ U.S. ___, 107 S.Ct. at 2148 and 2157, 2155 and N. 17 (biased judge and knowing use of perjured testimony results in an unfair trial).

G. Petitioner respectfully suggests a fair inference to be that Steiner's plan to present this case in an unfair manner began when he refused to print his trial transcript cross-examination by Petitioner, who did not

purchase this part of the expensive transcript. Thus, the Pennsylvania Appeal Courts could not observe how this engine of truth destroyed much of what he had said on direct and supported Petitioner's defense.

The same idea was used in re some other witnesses with the same effect. However, the Superior Court refused Petitioner's motion to force reproduction of this material by Steiner, who was the original appellant and had this obligation.

CONCLUSION ON THIS ISSUE

The wrongful conduct of Steiner and his counsel deprived Petitioner of his absolute right to a fair adjudication. The sanction is to take all benefits away and vacate the July 2, 1992 Superior Court decision, the October 29, 1993 Pennsylvania order and all other infected orders in this case.

II. DO FIRST AMENDMENT COURT ACCESS AND/OR FIFTH AND FOURTEENTH AMENDMENT SUBSTANTIVE AND/OR PROCEDURAL DUE PROCESS

PROHIBIT WHAT HAS HAPPENED IN THIS CASE AND, IN PARTICULAR, THE OCTOBER 29, 1993 ORDER OF THE SUPREME COURT OF PENNSYLVANIA AND THE OCTOBER 18, 1993 AND NOVEMBER 19, 1993 ORDERS OF THE SUPERIOR COURT OF PENNSYLVANIA?

A. Article 1, Section 11 of the Pennsylvania Constitution guarantees the substantive right of court access. Article 1, Section 12 bars non-legislative suspension of laws. Article 1, Section 17 forbids the impairment of contracts. Article 1, Section 20 guarantees the right of petition. Article 1, Section 26 bars discrimination. 42 Pa. C.S.A. 5102(a) guarantees a remedy for every right.

B. Article 1, Sections 1 and 25 guarantee due process of law and reputation. Article V, Section 9 guarantees the right of appeal.

C. Section 10 of the schedule to the judiciary article directs all Supreme Court judges be elected, and Article V, Section 13(a) mandates that all judicial officers be elected. Article 1, Section 17 prohibits all judicial

officers from practicing law and 13(b) prohibits justices and judges from violating "any canon of judicial ethics". Pa. R.A.P. 3121 bars any law clerk from the practice of law.

D. Pa. R.A.P. 123 mandates the absolute right to respond to all motions in 14 days and appeal from one judge and three judge panel decisions. Pa. R.A.P. 2572 directs the record be held in the respective appellate courts pending reargument, allocatur and U.S. Supreme Court certiorari. Pa. R.A.P. 3315 sets a procedure for appeal of Superior Court stay action to the Supreme Court of Pennsylvania. Pa. R.A.P. 1702(b) sets the procedure to request a stay pending a petition for review. 28 U.S.C. 1257(3) gives Petitioner an absolute right to petition the U.S. Supreme Court for certiorari. Pa. R.A.P. 3101 directs appellate courts are always open for the filing of proper papers and requests for relief. These rules have the force of statute under Pennsylvania

law. Lohmiller v. Lohmiller, 1983, 469 A.2d 478, 480, N. 4, 503 Pa. 329, 333, N. 4.

E. 42 Pa. C.S.A. 2501(a) provides for an absolute right to be heard. It says "Civil Matters. In all civil matters before every tribunal, every litigant shall have a right to be heard, by himself and his counsel, or by either of them." 42 Pa. C.S.A. 2502(a) directs in relevant part, "No attorney at law who is a member of the staff of a court shall appear as counsel in such court --" 42 Pa. C.S.A. 3151 mandates "Each judicial officer" promise to "support, obey and defend the Constitution of the United States and the Constitution of the Commonwealth" and "discharge the duties of my office with fidelity". 42 Pa. C.S.A. 724(a) directs, inter alia, "Final orders of the Superior Court -- may be reviewed by the Supreme Court --" and Pa. R.A.P. 1112(a) advises "an appeal may be taken by allowance under 42 Pa.C.S. Section 724(a) - from any final order of the Superior Court" by (Rule

1112(b)) "the filing of a petition for allowance with the Prothonotary of the Supreme Court --".

ARGUMENT ON THIS ISSUE

F. The October 18, 1993 Superior Court entered sua sponte, without prior notice or opportunity to face the charges declared Petitioner and unnamed trial court judges charged with processing his case on remand with conduct "leading to a breakdown of the administration of justice" and implicating concerns relating to the Rules of Professional Conduct 3.1 and 3.2 and Code of Judicial Conduct Canon 3(A)(4)(5).

1. The October 29, 1993, Supreme Court order closes its door to any request for relief from the obvious due process bars to this improper branding open to the public at large. Wisconsin v. Constanteneou, 1971, 400 U.S. 433, 437, 91 S.Ct. 507, 510; In re Ruffalo, 1968, 88 S.Ct. 1222, 390 U.S. 544; Armstrong v. Manzo, 390 U.S. 545, 85 S.Ct. 1187; Tulsa Professional

Collection Services, Inc. v. Pope, 1988, 485 U.S. 478, 484, 108 S.Ct. 1340, 1344.

Petitioner respectfully suggests the case record does not support the October 18, 1993 Superior Court finding that he was guilty of delay or obstruction of justice. Steiner caused the delay by splitting his cause of action and filing in September 1988 before a magistrate for ejectment and on September 1988 for rent. (See N. 1 of July 2, 1992 Superior Court opinion.) The magistrate filing mandated a hearing there, the absolute right to appeal for a mandated de novo arbitration hearing and the right to appeal to court where the rent and ejectment proceedings were consolidated and advanced for immediate trial at the top of the November trial list. In 1989, this caused it to be tried about two years ahead of when it would ordinarily come up.

Petitioner won the case at trial when Judge Martin filed his decision on December 21, 1989. It was Steiner who first asked for post

trial relief. This caused Brunwasser, who would not have done so, to do the same. Judge Martin had been defeated for election, so the delay in appointing Judge Friedman was court generated.

After Judge Friedman affirmed Judge Martin, it was Steiner who first appealed. The record indicates Petitioner would not have appealed if Steiner had allowed the verdict to stand. Steiner also caused additional delay by not taking judgment on the verdict, which is a mandated condition precedent to appeal and by filing four appeals and making unsuccessful unmeritorious motions to dismiss Petitioner's appeals.

After the July 2, 1992, unfavorable Superior Court decision, Brunwasser proceeded in the mandated timely manner in his attempt to reverse a case which overruled all Pennsylvania law. The times in which his objections must be raised are set by the rules which are mandatory and a matter of jurisdiction.

Any further delay was caused by the Superior and Supreme Court decision making procedures. Certainly, Petitioner should not be branded an obstructer of justice for the time it takes appeal courts to decide. Delay is built into the system and is part of due process of law.

The last dispositional Supreme Court order was October 29, 1993. The July 2, 1992 Superior Court order (Page 11, Lines 1-7) recognized Petitioner's absolute right to review and post supersedeas bond. Nowhere does the October 18, 1993 order advise the reader what Petitioner did that he should not have done and how this obstructed justice or caused improper delay. The four justice dissent in McDonald observes in its Note 14 that Chesman's sixth Supreme Court petition obtained the relief he had been previously denied (354 U.S. 156, 165, 77 S.Ct. 1127, 1132) and derailed his then scheduled trip to the death rendezvous.

Petitioner respectfully suggests that to

brand him as unethical is not only improper but contrary to record support. If asking for justice and supporting this request with overwhelming published favorable case law is obstruction, only lawyers looking for a public censure will pursue it.

2. It also lessens Petitioner's chances of having an impartial and unintimidated judge in the trial court. Gomes, Osborne and Accardi, supra. Petitioner respectfully suggests it will take a brave judge to not be influenced by the October 18, 1993 threat and that whoever presides will cautiously maintain a posture far from the danger line. Petitioner's above detailed experience with Judge Friedman after she received the threat of the September 10, 1992, Superior Court order clearly discloses the impact of such a finding.

3. Petitioner is also foreclosed from Supreme Court of Pennsylvania relief in re the November 19, 1993 order of the Superior Court, which, without prior warning or opportunity to

be heard, terminated the stay he had posted $272,400 to obtain.

G. Petitioner can find no published case which took the unusual action of the October 29, 1993 order. The furthest the U.S. Supreme Court has gone is to bar non-prior approved forma pauperous petitions in the most flagrant of circumstances, and, even then, the right to file a paid petition was preserved. In re McDonald, 1989, 489 U.S. 180, 109 S.Ct. 993 (a 5 to 4 decision); In re Sindram, 1991, 498 U.S. 177, 111 S.Ct. 596; Matter of D.C. Court of Appeals, 1992, 113 S.Ct. 397, ___ U.S. ___; Martin v. Bar of the D.C. Court of Appeals, 1991, ___ U.S. ___, 112 S.Ct. 355. All of the above cases were recently cited in Sassower v. Crites, October 12, 1993, ___ U.S. ___, 114 S.Ct. 2 and Day v. Day, October 12, 1993, ___ U.S. ___, 104 S.Ct. 4.

H. Petitioner respectfully suggests the November 19, 1993 order violates the teaching of cases like Zauderer v. Office of

Disciplinary Counsel of the Supreme Court of Ohio, 1985, 471 U.S. 626, 105 S.Ct. 2265 and the October 29, 1993 order is too broad in violation of the above cited cases and Zauderer. (See N. 16 of four justice dissenting opinion in re protection of a good name).

I. Sauderer, 471 U.S. at 647, 105 S.Ct. at 2280 and Owens v. Beard, 1993, M.D.Pa. 829 F.Supp. 736, 738-739 (U.S. Supreme Court cases collected) discuss substantive due process.

1. Petitioner respectfully urges this nation's highest court to rule the above three orders violated this right.

J. Pennsylvania has given Petitioner the various substantive rights enumerated in Sections A, B, C, D and E above. Once given,t hey cannot be ignored. Griffin v. Illinois, 1956, 351 U.S. 12, 18, 76 S.Ct. 585, 590; Lindsay v. Normet, 1972, 405 U.S. 56, 77, 92 S.Ct. 862, 876; Evitts v. Lucey, 1985, 469 U.S. 387, 393, 404, 405, 105 S.Ct. 830, 834, 841;

Granberry v. Greer, 1987, ___ U.S. ___, 107 S.Ct. 1671, 1676; Groppi v. Wisconsin, 1970, 400 U.S. 505, 511, 91 S.Ct. 490, 494; Ham v. South Carolina, 1973, 409 U.S. 524, 527, 93 S.Ct. 848, 850; Bush v. Lucus, 1983, 462 U.S. 367, N. 10, 103 S.Ct. 2404, N. 10; Linn v. United Plant Guard Workers of America, 1966, 383 U.S. 53, N. 6, 86 S.Ct. 657, N. 6; Duggett v. Kimmelman, 1983, C.A. 3, 811 F.2d 793, 800; Marbury v. Maidson, 1803, 1 Cranch, 1983.

K. Petitioner respectfully suggests the October 29, 1993 order has left him without a remedy.

CONCLUSION

The October 18, 1993, November 19, 1993 and October 29, 1993 orders violate federal substantive and procedural due process and the absolute right to court access as protected by the First, Fifth and Fourteenth Amendments. The courthouse door has not been closed to Steiner as late as November 23, 1993, a pending petition was denied as moot.

III. WHEN THE HIGHEST JUDICIAL COURT OF A STATE IS IN TURMOIL, SHOULD ITS ADJUDICATION STOP UNTIL THE PROBLEMS ARE RESOLVED?

A. It is unfortunate that the rules of this nation's highest court do not provide for photographing in a petition for certiorari.

B. Petitioner could then clearly disclose the charge leveled by Justice Larsen against Justices Cappy and Zappala, their counter charges against him, the racial attacks by Justice Larsen against Chief Justice Nix in an attempt to defeat him for retention, the indictment of Justice Larsen for drug offenses used to control his emotional instability, the antagonism which prevents the court for meeting en banc in the conference room to discuss cases, the ongoing grand jury investigation of the court, the pending impeachment proceedings against Justice Larsen, the use of part-time law clerks who also practice general law, the alleged fixing by various justices, etc.

B. Petitioner has been advised that the

Pennsylvania Supreme Court decides cases by sending each to a single justice who makes the decision whereupon if no one objects, this becomes the final result.

Although the October 29, 1993 order says Justice Larsen did not participate in it, there is no statement that he did not participate up to October 28, 1993, when he was summarily suspended or that he was not the assigned judge who denied review or relief on any or all previous occasions detailed in Petitioner's procedural statement above.

Petitioner's attempts to find out if Justice Larsen was the assigned judge have resulted in a stonewall refusal to tell him because this information is 100 percent secret.

Petitioner is hesitant to exercise his given right to complain as established by cases like Landmark Communications, Inc. v. Virginia, 1978, 435 U.S. 829, 839, 98 S.Ct. 1535, 1541 and In re Snyder, 1985, 472 U.S. 634, 646, 105 S.Ct. 2874, 2882. It is like a child

criticizing the parent and thus harming itself. Landmark was cited with approval in Larsen v. Phila. Newspapers, 1988, 375, Pa. Super. 66, 74-76, 543 A.2d 1181, 1184 (9 judges).

However, he can see no other remedy available to him. Justice Larsen's disciplinary case is published at In the Matter of Larsen, October 14, 1992, ___ Pa. ___, 616 A.2d 529. The court is also asked to take judicial notice of media releases which include suicide of his secretary, illegal purchase of prescription drugs by his staff, including a law clerk, and the suicide of Mr. Rice, a former Supreme Court of Pennsylvania Chief Clerk.

C. Since Petitioner can find no published cases similar to what is listed above, the remedy in this case of first impression will be left to this nation's highest court.

1. He respectfully suggests the use of non-elected, part-time clerks violates Pa. R.A.P. 3121 and 42 Pa. C.S.A. 2502(a) and the

above described conduct violates 42 Pa. C.S.A. 3151 and Article 1, Section 13(b) of the Pennsylvania Constitution. (Justices not to violate Code of Judicial Ethics).

2. Canon 1 mandates "high standards of conduct"; canon 2A advises "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary".

3. Of course, Petitioner is not giving any opinion on how the charges will turn out or if they are true.

D. Petitioner respectfully suggests the unusual outcome of his unique case should not be decided under such a court system.

CONCLUSION

Petitioner denies that he is what Respondent has said he is. His constant efforts to have this material stricken or have Respondent prove it have been rejected.

Petitioner respectfully suggests the ad

hominem attacks on him plus all trial court judges who ruled in his favor had to influence the higher courts which overruled all published law in announcing the decisions discussed in this petition.

The court is respectfully asked to take judicial notice that Steiner's conduct in this case is not unique and, unrestricted, is becoming an accepted national standard.

On October 29, 1993, in Com. v. Hill, ___ Pa. Super. ___, 632 A.2d 928, accusing various judges of being "crooks", "bastards" a "perjurer", an "asshole", etc. was not only overlooked by the Pennsylvania Superior Court (the same day the Pennsylvania Supreme Court closed its doors to Brunwasser) but resulted in a conciliatory response.

Petitioner respectfully suggests that since fifty years has passed since Supreme Counsel of the Royal Arcanum v. Green, 1914, 237 U.S. 531, 546, 35 S.Ct. 724, 729 was published, his case is an excellent vehicle to

restate what it said and restore professional conduct to what it used to be by granting certiorari and restating what was said on November 16, 1993, in Steffan v. Aspen, C.A.D.C., 8 F.2d 57, 70 ("America's hallmark has been to judge people by what they do, and not by who they are."

Certiorari should be granted.

Respectfully submitted,

ALLEN N. BRUNWASSER

APPENDIX

United States Constitutional
Provisions Involved . . . . . App. 1

Relevant Opinions and Orders of Court

12/5/90 Verdict and Order . . . . . App. 8
12/4/90 Opinion . . . . . App. 18
12/7/90 Memorandum Opinion . . . . . App. 30
2/5/91 Supplemental Opinion . . . . App. 34
12/9/91 Order of Court . . . . . App. 39
2/3/92 Order of Court . . . . . App. 41
7/2/92 Judgment . . . . . App. 42
8/5/92 Order of Court . . . . . App. 63
8/31/92 Order of Court . . . . . App. 65
9/10/92 Order of Court . . . . . App. 66
9/11/92 Order of Court . . . . . App. 67
9/22/92 Order of Court . . . . . App. 68
4/5/93 Order of Court . . . . . App. 69
4/29/93 Order of Court . . . . . App. 70
7/20/93 Order of Court . . . . . App. 71
10/18/93 Order of Court . . . . . App. 73
10/29/93 Order of Court . . . . . App. 75
11/8/93 Order of Court . . . . . App. 77
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Pittsburgh Press News Releases . . . . App. 80

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to United States Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Fifth Amendment to United States Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law; -"

Fourteenth Amendment to United States Constitution:

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

PENNSYLVANIA CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Article 1 of the Constitution of the Commonwealth of Pennsylvania:

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of

enjoying and defending life and liberty, of acquiring, possession and protecting property and reputation, and of pursuing their own happiness.

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

Section 9. In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and case of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.

Section 11. All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Section 12. No power of suspending laws shall be exercised unless by the Legislature or

by its authority.

Section 17. No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

Section 20. The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance.

Section 25. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Section 26. Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

Article V of the Constitution of the Commonwealth of Pennsylvania:

Section 9. There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

Section 13. (a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of

office by the electors of the Commonwealth or the respective districts in which they are to serve.

Schedule No. 1 (Adopted With the Constitution):

Section 10. The judges of the Supreme Court in office when this Constitution shall take effect shall continue until their commissions severally expire. Two judges in addition to the number now composing the said court shall be elected at the first general election after the adoption of this Constitution.

Pennsylvania Rules of Court:

Rule 123(b). Answer. Any party may file an answer to an application within 14 days after service of the application, but applications under Chapter 17 (effect of appeals; supersedeas and stays), or for delay in remand of the record, may be acted upon after reasonable notice, unless the exigency of the case is such as to impel the court to dispense with such notice. The court may shorten or extend the time for answering any application.

Rule 123(e). Power of Single Judge to Entertain Applications. In addition to the authority expressly conferred by these rules or by law or rule of court, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by application, except that an appellate court may provide by order or rule of court that any application or class of applications must be acted upon by the court. The action of a single judge may be reviewed by the court.

Rule 1702(b). Proceedings on Petition for

Allowance of or Permission to Appeal. Applications for relief under this chapter may be made without the prior filing of a petition for allowance of appeal or petition for permission to appeal, but the failure to effect timely filing of such a petition, or the denial of such a petition, shall automatically vacate any ancillary order entered under this chapter. In such a case the clerk of the court in which the ancillary order was entered shall, on praecipe of any party to the matter, enter a formal order under this rule vacating such ancillary order.

Rule 2572(c). Stay of Remand Pending United States Supreme Court Review. A stay of the remand of the record pending review in the Supreme Court of the United States may be granted upon application to the appellate court possessed of the record in the case. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the prothonotary of the appellate court possessed of the record a notice from the Clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a jurisdictional statement or a petition for a writ of certiorari in that court, the stay shall continue until final disposition by the Supreme Court of the United States. Upon the filing of a copy of an order of the Supreme Court of the United States dismissing the appeal or denying the petition for a writ of certiorari the record shall be remanded immediately.

Rule 3101. Appellate Courts Always Open. An appellate court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making application and orders.

Rule 3121. Practice of Law By Staff.

Neither the prothonotary, deputy prothonotary, chief clerk, nor any person employed in the Office of the Prothonotary, nor any law clerk, administrative assistant, or secretary employed by an appellate court or by any judge thereof, shall practice in the court. Nor shall any such person otherwise practice law without prior approval of the judge on whose staff such person is employed or of the president judge if such person is not so employed.

Rule 3315. Review of Stay Orders of Appellate Courts. Where the Superior Court or the Commonwealth Court in the exercise of its appellate jurisdiction has entered an order under Chapter 17 (effect of appeals; supersedeas and stays), such order may be further reviewed by any justice of the Supreme Court in the manner prescribed by Chapter 17 with respect to appellate review of supersedeas and stay determination of lower courts.

Judicial Conduct Rules:

3A(4). "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, must not consider ex parte conversations concerning a pending case."

3A(5). "A judge should dispose promptly of the business of the court."

Pennsylvania Rules of Professional Responsibility:

3.1. "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the

respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."

3.2 "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

42 Pa. C.S.A. 5101(a):

"Remedy to exist for legal injury.

(a) General Rule - Every person for a legal injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

RELEVANT OPINIONS AND ORDERS

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	CIVIL DIVISION
Plaintiff,	No. 10271 of 1988 No.G.D.88-17478
vs.	Consolidated Code: 040-Ejectment
ALLEN N. BRUNWASSER,	Issue No. 138229
Defendant.	VERDICT AND ORDER
	MARTIN, J.
	Copies to: Maurice A. Nernberg, Esquire Nernberg & Laffey 301 Smithfield Street Pittsburgh, PA 15222-2277
	Allen N. Brunwasser, Esquire P.O. Box 22212 Pittsburgh, PA 15222

"VERDICT AND ORDER

MARTIN, J.

These Consolidated Cases have come before this Court for Trial, Non-Jury.

This Court has taken into consideration all of the testimony presented by the parties, all of the exhibits which were either

identified and to which testimony was submitted, as well as those admitted into evidence, and the proposed Findings of Fact and Conclusions of Law submitted following the trial of this matter. This Court has also considered applicable case law cited by the parties and the Court's independent analysis.

This Court enters the following Verdict and does so by exercising its jurisdiction as to Law and Equity as the evidence and this Court's findings relates to the issues presented by the Pleadings in the Consolidated Cases.

In favor of the Defendant and against the Plaintiff on the cause of action for possession of the premises and in favor of the Plaintiff and against the Defendant on the cause of action for rentals due, in accordance with the following which this Court enters as an Order pursuant to and incorporates in the Court's Verdict.

1. Allen N. Brunwasser, Defendant, is

entitled to possession of Unit 19-D of the Gateway Towers Condominium, by reason of a lease wherein he is the tenant and Commonwealth-Fort Associates, an Illinois limited partnership, is the Lessor. The subject lease is for a period of five years, commencing April 1, 1984 and continuing to March 31, 1989 and one five year renewal period commencing April 1, 1989 and terminating March 31, 1994 in accordance with the lease set forth in Plaintiff's Exhibit "R". (This Exhibit does not reflect the Court's sole basis for this Finding but does represent the controlling terms of the lease.)

2. The Defendant, Allen N. Brunwasser, shall pay all rentals due under the terms of the said lease to the Plaintiff, John E. Steiner, who acquired valid title to Unit 19-D from Commonwealth-Fort Associates, an Illinois limited partnership. The rentals due Commonwealth-Fort Associates, an Illinois limited partnership, under and pursuant to the

terms of the lease with Defendant, Allen N. Brunwasser, have been assigned to John E. Steiner, Plaintiff.

3. The Defendant, Allen N. Brunwasser, shall pay the sum of $550.00 per month for the period commencing April 1, 1984 to August 31, 1988 or a total of 52 months, or, the total sum of $28,600.00, and commencing September 1, 1988 to December 31, 1989, or a total of 16 months, the sum of $350.00 per month or the total sum of $5,600.00.

4. The total sum of $34,200.00, as set forth in Paragraph 3, shall be paid by Defendant, Allen N. Brunwasser, to the Prothonotary of Allegheny County and the Prothonotary shall release said sum unto John E. Steiner upon confirmation by the Allegheny County Health Department that all violations currently on record with said Department have been corrected satisfactory to the Department and, further, subject to Paragraph 7 of this Verdict.

5. Defendant, Allen N. Brunwasser, shall deposit said sum with the Prothonotary of Allegheny County on or before December 31, 1989.

6. Defendant shall permit Plaintiff's authorized agents to enter Unit 19-D for the purpose of making all necessary and proper repairs in order to correct all defects in said unit so as to secure approval of the Allegheny County Health Department as to all recorded violations or defects. In addition, Plaintiff Steiner shall make such wall, sink, bathroom fixtures and window repairs as are reasonable and proper to place Unit 19-D in a habitable condition. The cost of such repairs and all liability, unemployment and Worker's Compensation coverage for those engaged in the repair activities shall be the sole responsibility of Plaintiff or his agents, servants and employees, or his independent Contractor or Sub-Contractors.

7. All reasonable repairs required to be

performed by Plaintiff shall be by the mutual agreement of the Plaintiff and Defendant. In the event there is any dispute or failure to agree on such repairs, both as to quality and extent, then, a qualified individual, as to the extent and quality thereof, selected at the sole discretion of the President of the Gateway Towers Condominium Association, shall make said determination which will be binding upon the parties. The identification, quality and extent of such repairs shall be agreed to by the parties within fifteen (15) days of this Verdict and, in the event of a failure to agree, within thirty (30) days of this Verdict.

Both the requirements of Paragraph 4 and of this Paragraph, as to repairs and habitability of Unit 19-D with respect to the completion of the required work shall be substantially completed on or before 120 days from the date of this Verdict.

Upon completion of the work and repairs required to be performed in Unit 19-D, the

Prothonotary shall release the total sum of $34,200.00, less poundage, to the Plaintiff. Prior to the release of the aforesaid sum, the Prothonotary shall require, in writing, a statement from the Allegheny County Health Department that all recorded violations have been corrected and from the parties, or from the President of the Gateway Towers Condominium Association, that all repairs have been completed.

8. Defendant, Allen N. Brunwasser, shall cooperate fully and reasonably with Plaintiff, his agents, servants and employees or his independent contractor or sub-contractors, and, if necessary, with the President of the Gateway Towers Condominium Association and the authorized agents of the Allegheny County Health Department, so as to make Unit 19-D available for inspection, as well as for the performance of all work necessary and proper so as to comply with this Verdict/Order. This provision is not to be construed so as to deny

Plaintiff the use and occupancy of Unit 19-D. The required inspections, and the performance of the required work shall be at reasonable hours, not to exceed eight (8) hours per day, unless extended by the Defendant's consent and not on any holiday, Saturday and Sunday.

9. Should the Defendant, Allen N. Brunwasser, violate any provision of this Verdict/ Order as hereinafter determined, then, the lease shall be deemed terminated and he shall be removed from such premises on or before seven (7) days following said violation. Should Plaintiff assert a violation, he shall Petition this Court to make such determination within three (3) days of the alleged violation. This Court shall hold a hearing at a time and date set by the Court. The only issue before this Court shall be the alleged violation and no other. If this Court should find a violation then, subject to Defendant curing said violation within twenty-four (24) hours of the Court's determination, the lease shall be

deemed terminated and the Defendant removed within seven (7) days of the Order.

Should this Court find that Defendant has engaged in more than three (3) violations, even if cured as to the three violations, then, the lease shall be deemed terminated and the Defendant shall be removed from the premises within seven (7) days of such determination and Order.

10. Commencing January 1, 1990 the Defendant shall pay to the Plaintiff the rental sum of $350.00 per month until the date the Prothonotary shall release the rental sum set forth in Paragraph 4. At such time the Prothonotary releases the funds, then, Defendant shall pay to the Plaintiff the sum of $550.00 per month to the end of the lease term or March 31, 1994.

11. In the event Plaintiff shall fail, refuse or neglect to comply with the terms of this Verdict/Order, then, Defendant shall not be required to pay any monthly rentals nor

shall the funds deposited with the Prothonotary of Allegheny County be released to the Plaintiff until the end of the lease term or March 31, 1994.

12. The parties shall remain bound by the terms of the lease (Plaintiff's Exhibit "R") except as modified by the provisions of this Verdict.

This Verdict and Order is entered this 20th day of December, 1989.

Martin, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	)	CIVIL DIVISION
	)	
Plaintiff,	)	GD 88-17478
	)	No. 10271 of 1988
vs.	)	Consolidated
	)	
ALLEN N. BRUNWASSER,	)	NON-JURY VERDICT AT
	)	LAW DID NOT INCLUDE
Defendant.	)	EQUITABLE RELIEF
	)	
	)	OPINION & ORDER OF
	)	COURT DENYING POST-
	)	TRIAL MOTIONS
	)	
	)	Counsel of Record:
	)	Maurice A. Nernberg,
	)	Jr., Esq.
	)	301 Smithfield Street
	)	Pittsburgh, PA 15222
	)	
	)	Allen N. Brunwasser,
	)	Esq.
	)	P.O. Box 22212
	)	Pittsburgh, PA 15222

ORDER OF COURT

AND NOW, to-wit, this 5th day of December, 1990, after a review of the file and the trial transcript, as well as consideration of the briefs and arguments of counsel, the Post-Verdict Motions filed by both parties are DENIED.

See Opinion filed herewith.

By the Court,

Friedman, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	)	GD 88-17478
	)	NO. 10271 OF 1988
Plaintiff,	)	
	)	
vs.	)	
	)	
ALLEN N. BRUNWASSER,	)	
	)	
Defendant.	)	FRIEDMAN, J.

OPINION

HISTORY

The history of these two consolidated cases is too lengthy to recite in toto. The major points are as follows: Defendant, Allen Brunwasser, rented the subject apartment from a predecessor in title of John Steiner, the Plaintiff and purported present owner of the apartment. At some point, prior to Plaintiff's involvement, Defendant began withholding rent because of allegedly deteriorating conditions in the apartment. Plaintiff purchased the apartment and eventually brought an action in ejectment against Defendant, which was heard first before a District Magistrate, then, de

novo, in arbitration, and lastly, again de novo, in the Court of Common Pleas as one of the two consolidated cases which are the subject of these Post-Trial Motions. Plaintiff's other consolidated case against Defendant is a civil action for past rentals due to him in his own right and for those due to him because of assignment from his predecessor in title.

After the non-jury trial, Judge Martin recorded his decision in a combined verdict and order. The Plaintiff filed Post-Trial Motions and Defendant then filed Additional Post-Trial Motions.

INTRODUCTION TO ISSUES INVOLVED

The trial itself is shown by the transcript to have been conducted with fairness and patience by Judge Martin, no longer a member of this Court.

There are no evidentiary or procedural errors that create such prejudice to either party as to require a new trial. Therefore,

the issues of fact should be left as Judge Martin resolved them. He was in the best position to determine the credibility of the witnesses and the weight to be given to the evidence presented. Furthermore, it is clear from the transcript that he not only retained his even temper in circumstances which sometimes appear to have been quite heated, he also did not allow himself to be diverted from careful attention to the evidence being presented to him.

The non-factual issues are primarily of a procedural nature: there are very few disputes which go to the substantive law involved. As to the procedural matters, Judge Martin chose to allow each party to present his case fully, even if a technicality raised by the other side would have permitted the judge to bar certain evidence or to refuse to consider certain legal arguments.

The factual issues include the terms of the lease, its expiration date, the actual

rentals charged for the apartment, and the fair rental value of the apartment in view of its condition and the desirability of its location.

Each party, as is not uncommon in civil litigation, is unhappy not to have won the case totally. However, neither party has presented any valid reason why Judge Martin's verdict is unjust or unsupported by the evidence. His verdict and order are clearly based on the evidence and on reason.

There are few issues raised by the parties which merit some discussion. Those not specifically dealt with are deemed by this Court to have no merit as far as Post-Verdict Motions and the expected appeals are concerned. The issues which will be discussed, however briefly, are:

1. Whether Plaintiff is correct in his contention that equitable relief was improperly granted since he filed an action at law.

2. Whether Defendant is correct in his contention that he was denied his right to a

jury trial as to the case at GD 88-17478.

3. Whether Defendant is correct, in Paragraphs 13A and B of his Additional Post-Verdict Motion that he was "ordered" and "directed" not to present evidence of rental value.

4. Whether the Court had jurisdiction as to title matters since the District Magistrate had none, as contended by Plaintiff (Paragraph 7 of Supplemental Filing to Brief in Support of Motion for Post-Trial Relief).

5. Whether it was improper to allow testimony which went beyond the pleadings.

* * * * *

DISCUSSION

1. THE VERDICT AND ORDER ENTERED BY THE TRIAL JUDGE DO NOT GRANT EQUITABLE RELIEF

Although Judge Martin does allude to his equitable powers in his verdict and order, the relief granted is not equitable. His verdict, clearly stated, is that the Defendant owes the Plaintiff certain rents totalling $34,200.00

and that the Defendant is entitled to continue in possession of the apartment through March 31, 1994. In other words, his verdict was for the Plaintiff at GD 88-17478 and for the Defendant at No. 10271 of 1988. His order, combined in the same document as the verdict, needs to be understood in the context of a long and difficult dispute between well-matched adversaries. Pa. Rule of Appellate Procedure 1733(a) permits a trial judge on his own motion to enter a supersedeas "as it deems just" to "maintain the status quo" or to "facilitate the performance of the order, if sustained." The fact that Judge Martin entered his order simultaneously with and in the same document as the verdict has no effect on the validity of the verdict which was properly rendered and is clearly based on the evidence. 2.

THE DEFENDANT WAS NOT ENTITLED TO A JURY TRIAL, HAVING WAIVED HIS RIGHT THERETO BY FAILING TO APPEAR AS DIRECTED TO SELECT A JURY.

According to the copy of a transcript attached to Defendant Brunwasser's brief, Mr. Brunwasser did not appear as scheduled on November 20, 1989 at 1:30 p.m. to pick his jury nor had he appeared by 2:15 p.m. when the Calendar Control Judge made of record the facts surrounding the date and time of jury selection and Mr. Brunwasser's non-appearance.

There is here no question of prejudice to a Defendant because of his attorney's mistake: here the Defendant is an attorney and is acting pro se. By failing to appear at the time scheduled, which is also the time to be expected according to local custom in the Court where Defendant practices, he has waived his right to a jury trial.

This waiver is further evidenced by his conduct during the beginning of the non-jury trial before Judge Martin on November 21, 1989. The Court can find no mention of this issue before Judge Martin. Many matters are vigorously discussed by Mr. Brunwasser, but

denial of his right to a jury trial is not among them. Clearly, he intended not to appear for jury selection and did not protest (at least for the record) when his trial went ahead without a jury rather than being continued to the next available list.

(Please note that the original transcript of this pre-trial proceeding before Judge McGowan has not yet been filed. However, since a purported copy of such a transcript was filed along with the brief of the Defendant, this lack of original cannot be prejudicial to him; rather it has been viewed by this Court as a true and correct copy of the transcript of the proceeding.)

3. THE DEFENDANT WAS NEITHER "ORDERED" NOR "DIRECTED" NOT TO PRESENT EVIDENCE OF RENTAL VALUE

The trial transcript reflects that there were discussions of the sequence in which the testimony regarding the right to possession and the fair rental value were to be presented.

(See, for example, TT Vol. II, pp. 475-476.) The transcript reflects that ample testimony was presented by both parties as to the fair rental value. It further reflects, at the end of the trial, that both parties felt the trial should finish on November 30, 1989, a Thursday, and that both had ample opportunity to present additional testimony if they wished. (See, for example, TT pp. 629 and 741-742.) The suggestion by the Defendant that he was prevented by the Court from presenting his evidence is unfounded.

4. THE COURT OF COMMON PLEAS HAD JURISDICTION TO DECIDE WHO HAD THE RIGHT TO POSSESSION OF THE APARTMENT.

The Plaintiff appears to claim that since a District Magistrate cannot decide matters of title and since only matters raised before the Magistrate may be re-litigated in a trial de novo, Judge Martin had no jurisdiction here to decide matters of title. It seems questionable to state that the jurisdiction of the Court of

Common Pleas in a de novo trial is necessarily limited by the jurisdiction of the District Magistrate who first heard the matter. Clearly, both Courts had jurisdiction to decide who had the right to possession, the issue raised by Plaintiff's action for ejectment. Judge Martin found that there was a lease between the parties which entitled the Defendant to possession of the premises. The reference to title matters being beyond the jurisdiction of a District Magistrate is mere obfuscation and merits no further discussion.

5. THE TESTIMONY ALLOWED DID NOT IMPROPERLY GO BEYOND THE PLEADINGS.

It is well settled that a judge hearing a case without a jury is deemed capable of sorting out what is proper and what is not. it is also well settled that the trial judge has broad discretion to determine what is relevant to the issues being litigated and what is not. In the instant case the trial judge, sitting without a jury, allowed each party broad

latitude in presenting his own case and attacking the other's. The end result was a fair trial, despite extensive procedural bickering by both parties, often presented in the guise of saving the Court's valuable time. There was no prejudice to either party created by the Court's rulings.

CONCLUSION

In sum, both parties got a fair trial of these two disputes between them. The reasons presented first by Plaintiff in his Post-Trial Motions and later by Defendant in his Additional Motion for Post-Trial Relief do not provide a basis for this Court, deciding Post-Verdict Motions, to change any portion of Judge Martin's verdict and order.

The Post-Trial Motions of both the Plaintiff and the Defendant should be denied. See Order attached.

By the Court,

Friedman, J.

DATED: December 4, 1990

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	CIVIL DIVISION
Plaintiff,	GD 88-17478
	No. 10271 of 1988
vs.	CONSOLIDATED
ALLEN N. BRUNWASSER,	ATTORNEY AND CLIENT - FEES
Defendant.	
	MEMORANDUM OPINION AND ORDER OF COURT DENYING PLAINTIFF'S REQUEST FOR COUNSEL FEES
	Filed by the Honorable JUDITH L. A. FRIEDMAN
	Counsel of Record:
	Maurice A. Nernberg, Jr., Esq. 301 Smithfield Street Pittsburgh, PA 15222
	Allen N. Brunwasser, Esq. P.O. Box 22212 Pittsburgh, PA 15222

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	)	GD 88-17478
	)	NO. 10271 OF 1988
Plaintiff,	)	CONSOLIDATED
	)	
vs.	)	
	)	
ALLEN N. BRUNWASSER,	)	
	)	
Defendant.	)	FRIEDMAN, J.

MEMORANDUM OPINION

The Superior Court, at No. 161 Pittsburgh 1989 and at No. 970 Pittsburgh 1989, referred two requests for attorney's fees to the trial court for disposition. The trial court, Martin, Jr., thereafter found those requests to be premature. The requests were to have been presented to Judge Martin "at the conclusion of this litigation along with supporting documentation or the request for a hearing, if necessary." It appears to this Court that those requests either (1) were renewed by implication in Plaintiff's Proposed Findings of Fact and Conclusions of Law filed December 7, 1989, and specifically in the Proposed Order of Court attached thereto and never signed, in

which case the request was refused by implication by Judge Martin's Verdict and Order filed December 20, 1989, or (2) were not renewed clearly by the inappropriate inclusion in a proposed Order attached to a document purporting to be Proposed Findings of Fact and Conclusions of Law, in which case the letter request to the undersigned is untimely, undocumented, and waived, as well as being an appropriate submission of the request. Under either interpretation of events, this Court finds that counsel fees should not be awarded.

Plaintiff's request for the same is denied. See Order filed herewith.

By the Court,

Friedman, J.

DATED: December 10, 1990

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	)	GD 88-17478
	)	NO. 10271 OF 1988
Plaintiff,	)	CONSOLIDATED
	)	
vs.	)	
	)	
ALLEN N. BRUNWASSER,	)	
	)	
Defendant.	)	FRIEDMAN, J.

ORDER OF COURT

AND NOW, to-wit, this 7th day of December, 1990, it is hereby ORDERED that Plaintiff's request for counsel fees is DENIED.

See Memorandum Opinion filed herewith.

By the Court,

Friedman, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	CIVIL DIVISION
Plaintiff,	GD 88-17478
	No. 10271 of 1988
vs.	CONSOLIDATED
ALLEN N. BRUNWASSER,	NON-JURY TRIALS
Defendant.	
	SUPPLEMENTAL OPINION
	Filed by the Honorable JUDITH L. A. FRIEDMAN
	Counsel of Record:
	Maurice A. Nernberg, Jr., Esq. 301 Smithfield Street Pittsburgh, PA 15222
	Allen N. Brunwasser, Esq. P.O. Box 22212 Pittsburgh, PA 15222

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN E. STEINER	)	GD 88-17478
	)	NO. 10271 OF 1988
Plaintiff,	)	CONSOLIDATED
	)	
vs.	)	
	)	
ALLEN N. BRUNWASSER,	)	
	)	
Defendant.	)	FRIEDMAN, J.

SUPPLEMENTAL OPINION

This Opinion is intended to supplement the Memorandum Opinion filed earlier, a copy of which is attached hereto for convenience.

In his Response to this Court's Order to File a Statement of Matters Complained of on Appeal, Plaintiff suggests that this Court did not review the record or the transcript. While one ordinarily is loathe to respond to an ad hominem attack, a short reply may be helpful. The record was reviewed, the transcript was read, and the conclusion was reached that Judge Martin, the trial judge, rendered a fair and proper verdict based on the law and on common sense.

The arguments of Plaintiff continue to be

conclusory in nature. In fact, one of the reasons for soliciting his Statement of Matters Complained of was to give him an opportunity to present law in support of his contention that Judge Martin's decision was incorrect. Instead, Plaintiff's attorney makes it clear that he is unable to support that proposition.

The standard of review of non-jury trial is not what the reviewing judge might have done in the particular circumstances of the trial. "The findings of a trial judge must be accorded the same weight and effect on appeal as the verdict of a jury, and will not be reversed in the absence of an abuse of discretion or a finding of a lack of evidentiary support. (Citation omitted.) 'Abuse of discretion' is not merely an error of judgment, but if in reaching a conclusion the law is overriden or misapplied, or the judgment exercised is manifestly unreasonable or the result of prejudice, partiality, bias, or ill-will, as shown by the evidence or the record, discretion

is abused." In re Estate of Cornell, 336 Pa. Super. 594, 486 A.2d 424 (1984), appeal granted 498 A.2d 869, rev'd on other grounds, 511 Pa. 475, 515 A.2d 555 (1986); accord Piccinini v. Teacher's Protective Mutual Life Ins. Co., 316 Pa. Super. 519, 463 A.2d 1017 (1983).

It is clear that Plaintiff continues to be dissatisfied with the various rulings and decisions of Judge Martin. However, as evidenced by his Response to Order of File Statement of Matters Complained of on Appeal, he also continues to present no meritorious arguments against anything Judge Martin had done.

It is submitted that a careful review of the lengthy record, including the transcript, will show that Judge Martin reached an eminently fair and just verdict. In the last month of his service as a judge in our busy Civil Division he may very well have made a clerical miscalculation by not filing a verdict separately from his Order entering a

supersedeas. However, this is a minor flaw understandable in the circumstances and clearly does not warrant a new trial.

As to this Court's finding that the counsel fee issue either was refused by implication by Judge Martin or was waived by the Plaintiff, the Plaintiff suggests no other construction that may be made from the relevant documents. Rather he again resorts to attacks on the diligence of this Court. The conclusion to be drawn is that Plaintiff's legal and factual arsenal is as bare with regard to this matter as it was in attacking Judge Martin's Verdict and Order.

By the Court,

Friedman, J.

DATED: February 5, 1991

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

December 9, 1991

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner vs. Allen N. Brunwasser
Nos. 71, 71, 718 & 1211 Pgh. 1991

Dear Mr. Brunwasser:

The Court has entered the following Order on the Motion to Quash Appeal, Strike Brief and Reproduce Record and Remand Case to Lower Court for Proper Processing Plus Opinions by Judges R. Stanton Wettick, Jr. and Bernard J. McGowan and to Postpone Briefing Schedule in the above-captioned matter:

"ORDER OF COURT

Upon consideration of the Motion to Vacate, the motion is denied for the reasons stated in June 7 order. See Pa. R.A.P. 902. Upon consideration of the Motion to Quash, the motion is denied without prejudice to argue to the panel to be assigned to this case the issue of whether the alleged failures of the appellant at Nos. 71 and 72 have defeated effective appellate review. Appellee's brief shall be due within thirty days of the date of this order. The court notes that although the caption of the petition seeks a remand for opinions, the body of the motion contains no argument thereon and is therefore denied.
Date: December 9, 1991

PER CURIAM"

Very truly yours,
Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ejf
cc: Maurice A. Nernberg, Esquire
The Honorable R. Stanton Wettick, Jr.
The Honorable Bernard J. McGowan

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

February 13, 1992

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner vs. Allen N. Brunwasser
Nos. 71, 72, 718 & 1211 Pgh. 1991

Dear Mr. Brunwasser:

The Court has entered the following Order on the Motion to Strike Reply Brief in the above-captioned matter:

"ORDER OF COURT

Upon consideration of the Motion to Strike Steiner's Reply Brief, the motion is denied.

Date: February 3, 1992

PER CURIAM"

Very truly yours,
Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ejf
cc: Maurice A. Nernberg, Esquire

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

JOHN E. STEINER, APPELLANT AT NOS. 71 & 72 PGH. 1991	:	
V.	:	
ALLEN N. BRUNWASSER, APPELLANT AT NOS. 718 & 1211 PGH. 1991	:	NOS. 71, 72, 718 & 1211 PITTSBURGH, 1991

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Allegheny County be, and the same is hereby REVERSED IN PART AND REMANDED IN PART.

JURISDICTION RELINQUISHED.

BY THE COURT:

Eleanor R. Valecko
DEPUTY PROTHONOTARY

DATED: JULY 2, 1992

JOHN E. STEINER,) IN THE SUPERIOR COURT
) OF PENNSYLVANIA
Appellant)
)
v.)
)
ALLEN N. BRUNWASSER,)
)
Appellee) NO. 00071 Pgh. 1991

Appeal from the Judgment of the Court of Common Pleas, Civil Division, of Allegheny County at No. GD 88-17478

JOHN E. STEINER,) IN THE SUPERIOR COURT
) OF PENNSYLVANIA
Appellant)
)
v.)
)
ALLEN N. BRUNWASSER,)
)
Appellee) NO. 00072 Pgh. 1991

Appeal from the Judgment of the Court of Common Pleas, Civil Division, of Allegheny County at No. 10271 of 1988

JOHN E. STEINER,) IN THE SUPERIOR COURT
) OF PENNSYLVANIA
Appellee)
)
v.)
)
ALLEN N. BRUNWASSER,)
)
Appellant) NO. 00718 Pgh. 1991

Appeal from the Judgment of the Court of Common Pleas, Civil Division, of Allegheny County at No. GD 88-17478

JOHN E. STEINER,	)	IN THE SUPERIOR COURT
	)	OF PENNSYLVANIA
Appellee	)	
	)	
v.	)	
	)	
ALLEN N. BRUNWASSER,	)	
	)	
Appellant	)	NO. 01211 Pgh. 1991

Appeal from the Judgment of the Court of Common Pleas, Civil Division, of Allegheny County at No. 10271 of 1988

BEFORE: TAMILIA, HUDOCK and HESTER, JJ.

MEMORANDUM: FILED: JULY 2, 1992

These consolidated appeals and cross-appeals are from judgments entered in the trial court denying post-trial motions and counsel fees made by both parties. At trial, Defendant (Brunwasser) was awarded possession of an apartment known in this litigation as Suite 19D Gateway Towers, Pittsburgh (19D), for the term of a lease which the court found would expire March 31, 1994, and Plaintiff (Steiner) was awarded rents for the period of his ownership of that apartment. Both parties filed post-trial motions which were denied by the trial court and these appeals followed. We reverse

in part and remand in part.

Initially, Steiner filed an action in ejectment with a district magistrate. He also filed an action for rents in the Court of Common Pleas.[1] The ejectment action resulted in a judgment in favor of Steiner, awarding him possession of 19D. From that judgment, Brunwasser filed an appeal to the Court of Common Pleas. The case was set for a de novo hearing before a panel of arbitrators on May 1, 1989. As a result of this hearing, Steiner was again awarded possession of 19D. Brunwasser again asserted his right to an appeal de novo. At this point, the ejectment action and the rent action were consolidated for trial in the Court of Common Pleas. At the conclusion of a bench trial, Brunwasser was awarded possession until March 31, 1994, the

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1We note that while a 1979 amendment to Pa. R.C.P. 1055, 42 Pa. C.S.A., permits an action for rent to be joined with an action in ejectment, the rule does not require they be joined together. Therefore, Steiner could properly choose the course of action he took here.

expiration date of a lease which the trial court found to exist. Steiner was awarded rents for the period of his ownership of 19D.

Steiner raises the following issues in his appeal:

1. Should the Court have granted judgment on the pleadings, summary judgment or entered judgment in accordance with the admissions[?]

2. Whether a defense should have been allowed when no defense had been pleaded?

3. Whether the Court should have prohibited the introduction of hearsay?

4. Whether the purported lease would have expired by its terms or been unenforceable due to nonpayment of rent?

5. Whether an unsigned document could be considered a lease.

6. Whether the Court erred in assessing damages by not computing the amount due as the amount assigned, plus interest on each payment as due?

7. Whether the Court should have awarded counsel fees based on two prior Superior Court orders?

8. Whether the Court failed to follow the appropriate procedure for an action at law tried before a Judge sitting without a jury?

Steiner's Brief at p. 3[2].

We will discuss Steiner's first two issues together because they both refer to the pleadings filed in these actions. Steiner argues that in the ejectment action (No. 10271 of 1988), he filed a complaint alleging his ownership of 19D. Steiner also included an abstract of title, as required by Pa. R.C.P. 1054, 42 Pa. C.S.A. Steiner alleged he had been entitled to possession of 19D since August 31, 1988, and that Brunwasser was in possession of the premises without a lease. Steiner alleged that proper notice to vacate the premises was given to Brunwasser, who failed to

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[2]We note initially that Brunwasser has filed cross-appeals in these cases. At the time each Notice of Appeal was filed by Brunwasser, the trial court ordered him to file a Concise Statement of Matters Complained Of On Appeal pursuant to Pa. R.A.P. 1925(b), 42 Pa. C.S.A. We can find no reference in either the docket entries or the official record as certified to this Court that Brunwasser has complied with those orders. Because we find that our appellate review of his appeal is hampered by the lack of such a statement, we dismiss his appeals for failure to comply with Pa. R.A.P. 1925(b).

comply.

Brunwasser's answer, as modified by the trial court, admits Steiner purchased the property on August 31, 1988, and admits that he has remained on the premises despite having been told to vacate. Brunwasser's answer, however, does not contain a new matter section, but, rather, in a "WHEREFORE" clause, states four possible defenses as follows:

> WHEREFORE, Defendant denies Plaintiff has any right to possession, claims his suit in ejectment is not founded upon sufficient facts and/or legal claims and believes Plaintiff will be unable to prove his claim on May 1, 1989 [date set for arbitration hearing] by sufficient facts and/or legal title. In addition, depending on what Plaintiff proves, Defendant has among his defenses:
>
> A. An agreement with Gateway Capital, Inc. and Three Rivers Capital, Inc. made in 1980 and 1981.
>
> B. Promises his unit would not be sold on which promises he relied to his present detriment.
>
> C. A lease ending March 31, 1994, if he determines to rely on said lease.
>
> D. Plaintiff's non-ownership and/or his lack of the right to exclusive and immediate possession.

Brunwasser's Answer at p. 9. Following these four paragraphs Brunwasser states:

> E. Defendant is not here adopting any or all of these defenses but will decide what his defense will be at the May 1, 1989 arbitration hearing depending on what Plaintiff presents and after cross-examination.

Id. at pp. 9-10. Brunwasser has failed to properly plead any defenses by the language quoted above. To claim that Brunwasser will decide which defense he chooses at a later date does not comport with proper pleading practice sufficiently to inform Steiner of that to which he must respond.

Our standard of review concerning the review of a motion for judgment on the pleadings requires that we examine the pleadings which were before the court and determine whether a clear error of law was made or whether these were facts disclosed by the pleadings which should properly go to a jury. Klebach v. Mellon Bank, N.A., 388 Pa. Super. 203, 565 A.2d 448 (1989). alloc. granted, ___ Pa. ___, 593 A.2d 420 (1990). In doing so, we

must accept as true all well-pleaded statements of fact by Steiner as the party against whom the decision was made. Id. "Judgment on the pleadings may be granted only where no material facts are in dispute and the case is so free from doubt that a trial would clearly be a fruitless exercise." Id. at ___, 565 A.2d at 449-450. As we stated in Hallman v. Turns, 334 Pa. Super. 184, 187, 482 A.2d 1284, 1287 (1984):

> The plaintiff's burden in an action of ejectment is clear; he must establish a right to immediate exclusive possession... In order to recover in an ejectment action, the plaintiff must show title at the commencement of the action and can recover, if at all, only on the strength of his own title, not because of weakness or deficiency of title in the defendant... This rule places upon the plaintiff the burden of proving a prima facie title...

Steiner pled a chain of title by alleging an abstract of title with supporting documents attached to his complaint. Pa. R.C.P. 1054, 42 Pa. C.S.A. Steiner also pled that Brunwasser was in possession without a lease since at least August 1, 1983.

Although Steiner does not incant the words "exclusive immediate right to possession", we find that he pled ownership, lack of a lease or other reason for Brunwasser's possession, and Steiner's right to possession since August 31, 1988, which was before the action was commenced. We find this is sufficient pleading to establish immediate possession, and we therefore find that Steiner has established a prima facie case in ejectment. Brunwasser admits Steiner purchased the property and he admits to being in possession. The only remaining issue, therefore, is whether Brunwasser was entitled to the immediate possession rather than Steiner. We find that Brunwasser has failed to plead a proper defense in that regard because no defenses were pled as a new matter in his answer. We find that the trial court should have granted Steiner's motion for judgment on the pleadings. We can find no reference in the docket entries, or in either the official record or reproduced

record, to indicate the pleadings were amended during the pendency of this action.

Pa. R.C.P. 1033, 42 Pa. C.S.A., states:

> A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended Pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

In Newcomer v. Civil Service Commission of Fairchance Borough, 100 Pa. Cmnwlth. 559, 515 A.2d 108 (1986), alloc. den., 514 Pa. 626, 522 A.2d 51 (1987), the court stated:

> The Pennsylvania Superior Court has gone so far as to say that pleadings may be amended "after pleadings are closed, while a motion for judgment on the pleadings is pending, at trial, after judgment or after an award has been made and an appeal taken therefrom". Biglan v. Biglan, 330 Pa. Super. 512, 521, 479 A.2d 1021, 1025-26 (1984) (emphasis added). Nevertheless, the discretion to grant or deny leave to amend remains with the trial court, and the fundamental purpose of the rule, which is to prevent cases from turning on purely technical defects, must be kept in mind. Id.

The Pennsylvania Supreme Court has

repeatedly stated that, despite this liberal policy, amendment will not be permitted where the effect will be to prejudice the opposing party. Bata v. Central Penn National Bank of Philadelphia, 448 Pa. 355, 380, 293 A.2d 343, 357 (1972) cert. den. 409 U.S. 1108 (1975). In discussing the concept of prejudice, the Court has adopted the following view:

> All amendments have this in common: they are offered later in time than the pleading which they seek to amend. If the amendment contains allegations which would have allowed inclusion in the original pleading (the usual case), then the question of prejudice is presented by time at which it is offered rather than by the substance of what is offered. The possible prejudice, in other words, must stem from the fact that the new allegations are offered late rather than in the original pleading, and not from the fact that the opponent may lose his case on the merits if the pleading is allowed.
>
> Id. (emphasis in original) Thus, although according to Biglan, petition for leave to amend can never be considered as filed absolutely too late, in light of the above, we think it is safe to assume that the later in the case such petition is filed, the more it can be presumed that prejudice will flow from its grant, and the less actual prejudice need be demonstrated. Clearly, where amendment is sought after the testimony has been concluded, prejudice will always result to the extent that the opposing party has not contemplated the subject matter of the proposed amendment in the preparation and trial of the case.

Id. at ___, 515 A.2d at 111. Brunwasser does

not seek to correct a "technical defect" in his answer, rather he seeks to amend to include defenses which were not pled in his original answer. The first written evidence we have that Brunwasser seeks to amend his answer comes after argument on appeal to our court. To permit amendment of the answer now to assert defenses such as the "lease" severely prejudices Steiner, who must respond to those defenses. Again, it is uncertain whether Brunwasser wants to plead a written or an oral lease. Nothing would be gained by permitting amendment at this time except to prejudice Steiner in his action. We, therefore, reverse the trial court's holding on this matter and direct the trial court to enter judgment on the pleadings in favor of Steiner. As a result of this disposition, immediate possession is awarded to Steiner.

We note that Brunwasser argues that he pled a lease expiring March 31, 1994 (presumably he is referring to his statement in

paragraph C of the WHEREFORE clause). If Brunwasser relies on a written document to support this assertion, he has failed to attach a copy of that lease to his pleadings as required by Pa. R.C.P. 1019(h).

We also note that Brunwasser has claimed that the trial court precluded him from raising a new matter by ordering him to file an answer only. Brunwasser, however, did answer and arguably listed some available defenses. Brunwasser, however, negated the effect of those statements by saying that he was not adopting them at that time. This made it impossible for Steiner to respond (i.e., statute of frauds). We note that a new matter is a heading within the answer and not a separate pleading itself. Pa. R.C.P. 1030, 42 Pa. C.S.A. This is simply not proper pleading practice, especially considering the experience and years of law practice of Brunwasser. Therefore, Brunwasser's claim here fails.

Next we turn to the rental case (No. GD88-

17478). Steiner's complaint alleges ownership of 19D since August 31, 1988, and that Brunwasser has been in continuous possession since at least that date. Steiner alleged that Commonwealth Fort Associates was the predecessor in title and it assigned to Steiner any amounts due as a result of Brunwasser's continued use and possession. Steiner alleged that Commonwealth Fort Associates demanded that Brunwasser vacate 19D while it owned the apartment. Steiner alleged that the rental value of 19D from August 31, 1988, until present is $1,200 per month, and the rental value from August 1, 1983 (the date Commonwealth Fort Associates took title) until August 31, 1988, was $800 per month. Steiner calculates the rent due him at $48,000. He also claims he is entitled to interest on each rental payment at the legal rate. Brunwasser answered this complaint and included several defenses, including a claim that 19D was uninhabitable under Fair v. Negley, 257 Pa.

Super. 50, 390 A.2d 240 (1978); Beasley v. Freedman, 256 Pa. Super. 208, 389 A.2d 1087 (1978); Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979). Each of these cases, however, rely on the existence of a lease to support a duty by the landlord to maintain the premises in a habitable condition. Brunwasser did not plead the existence of a lease, either oral or written, and has, therefore, not asserted grounds upon which to rely on this line of cases. Due to the uninhabitability, Brunwasser asserts 19D has no value. Because we find that Brunwasser has had no valid right to be in possession of 19D since June of 1979, when he was first told to vacate after the expiration of a lease (which expired March 31, 1979), the trial court should have been left with the task of determining only the amount of damages due Steiner from the time Commonwealth Fort Associates owned 19D to present. The record does not support a finding of those damages, because the trial court improperly relied on a

lease. We therefore remand for a trial on damages due Steiner for Brunwasser's improper continued possession of 19D from August 1, 1983, until the present.

We note that, because we find that Steiner has a valid claim for immediate possession of 19D, should Brunwasser refuse to vacate the premises by filing an appeal (which he may do), the trial court is directed to determine a proper supersedeas bond based on the fair value of 19D from the period August 1, 1983, to such time as it is reasonably calculated that an appeal will consume.

Finally, Steiner claims he is entitled to counsel fees for an appeal taken by Brunwasser to the Superior Court at No. 161 Pittsburgh 1989. Steiner claims that our previous orders disposing of that appeal determined that counsel fees were proper and directed the trial court to award them. Our reading of the record is contrary to this claim. In an order dated February 23, 1989, we quashed Brunwasser's

appeal and stated, "The request for counsel fees is referred to the trial court for disposition." We read this language to mean that we did not decide whether the appeals were frivolous, and therefore ripe for imposing counsel fees on Brunwasser. Rather, we directed the trial court to make the necessary determination of whether the appeals were frivolous, and, therefore, determine whether counsel fees should be awarded. To read otherwise is unsupported by the record before us. This was not done by the trial court, and, therefore, the matter comes before us for disposition through Steiner's appeal. This appeal (No. 161 Pittsburgh 1989) arose following the denial of Brunwasser's preliminary objections on January 10, 1989. Judge Wettick ordered Brunwasser to file an answer within twenty (20) days. Brunwasser's preliminary objections raised the following issues which Judge Wettick found to be without merit:

> 1. Petition raising questions of jurisdiction. Whether the district magistrate had jurisdiction to hear the original ejectment action;
>
> 2. Motion for more specific pleading;
>
> 3. Petition raising lack of capacity to sue, pendency of prior action, nonjoinder of necessary parties;
>
> 4. Motion to strike complaint due to lack of conformity to law or rule of court;
>
> 5. Demurrer

Under Pa. R.A.P. 2744, 42 Pa. C.S.A., we may award reasonable counsel fees if we:

> determine that an appeal is frivolous or taken solely for delay or that the conduct of the participants against whom costs are to be imposed is dilatory, obdurate or vexatious. [We] may remand the case to the trial court to determine the amount of damages authorized by this rule.

The test for identifying a frivolous appeal is:

> to determine whether [Brunwasser's] realistic chances of ultimate success are slight and further, whether continuation of the contest is reasonable.

Martino v. Commonwealth, 116 Pa. Cmnwlth. 200, ___, 541 A.2d 425, 427 (1988). We can find no basis upon which Brunwasser could have sustained his appeal. The order denying his preliminary objections was an interlocutory

order from which an appeal as of right does not exist under Pa. R.A.P. 311, 42 Pa. C.S.A. Nor is there any evidence of record that Brunwasser filed a petition for permission to appeal an interlocutory order under Pa. R.A.P. 1311, 42 Pa. C.S.A. Brunwasser's appeal is, therefore, frivolous and Steiner's motion for counsel fees is granted. We remand to the trial court for a hearing on the amount of counsel fees to be awarded regarding the appeal at No. 161 Pittsburgh 1989.

Steiner has properly raised this issue at each stage in the litigation, and we can find no trial court disposition before post-trial motions. We do not find that Judge Friedman conducted the necessary factfinding when she held that either Judge Martin denied the motion by implication, or Steiner abandoned the claim. We find that Judge Martin could not have, "by implication", denied the claim for counsel fees because no hearing was held concerning them. He appears to have deferred them until trial,

and then failed to take any testimony concerning the issue.

Because of our disposition of the previous issues, we do not rule on the other issues raised by Steiner. Judgement awarding possession to Brunwasser is reversed with a direction to the trial court to enter judgment on the pleadings in favor of Steiner, and thus award possession to Steiner. Judgment awarding rent payments to Steiner is reversed and remanded for a new trial on the damages sustained by Steiner as a result of Brunwasser's continued possession of 19D since August 1, 1983. The issue concerning counsel fees is remanded to the trial court to determine the amount of fees incurred by Steiner in responding to Brunwasser's appeal at No. 161 Pittsburgh 1991.

Judgments reversed in part and remanded in part. Jurisdiction relinquished.

IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

No. 71, 72, 718 & 1211 Pittsburgh 1991

JOHN E. STEINER, APPELLANT AT NOS. 71 AND 72	)	
V.	)	No. GD 88-17478 and 10271 of 1988
ALLEN N. BRUNWASSER, APPELLANT AT NOS. 718 AND 1211	)	

Appeal from the Orders entered on December 5 and December 7, 1990 and Judgments entered on March 18, 1991, by the Honorable Judith L.A. Friedman, Court of Common Pleas of ALLEGHENY COUNTY

Certified from the Record

ORDER OF COURT

"AND NOW, to-wit, this 5th day of August, 1992, pursuant to Pa. R.A.P. 2591(b), the Motion of John E. Steiner to vacate the order of court entered July 9, 1992, by the Honorable Judith L.A. Friedman is hereby GRANTED, the supersedeas bond set in said order being unreasonably low.

Said Order is hereby vacated and Judge Friedman is directed to hold a hearing within twenty (20) days of this Order to set an appropriate supersedeas bond with the issue being limited solely to the fair rental value of the premises in question from August 1, 1983 to date.

DATE: August 5, 1992 Per Curiam"

In Testimony Whereof, I have hereunto set my hand and the seal of the said Court at Pittsburgh, PA, this 12th day of August, 1992.

Eleanor R. Valecko
Deputy Prothonotary

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

August 31, 1992

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner vs. Allen N. Brunwasser
Nos. 71, 72, 718 & 1211 Pgh. 1991

Dear Mr. Brunwasser:

The court has entered the following Order on the Motion for Court En Banc Reargument and PA. R.A.P. 123(e) Full Court Review of Per Curiam Order of August 5, 1992 in the above-captioned matter:

"ORDER OF COURT

The Court hereby denies the motion for Court En Banc Reargument and PA. R.A.P. 123(e) Full Court Review of Per Curiam Orders dated August 5, 1992.

Date: August 31, 1992

PER CURIAM"

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ejf
cc: Maurice A. Nernberg, Jr., Esquire

JOHN E. STEINER	)	IN THE SUPERIOR COURT
	)	OF PENNSYLVANIA
v.	)	
	)	No. 00071 Pgh. 1991
ALLEN N. BRUNWASSER	)	No. 00072 Pgh. 1991
	)	No. 00718 Pgh. 1991
	)	No. 0121 Pgh. 1991

ORDER OF COURT

AND NOW, to-wit, this 10th day of September, 1992, pursuant to the authority of this Court as provided in Pennsylvania Rule of Appellate Procedure 2591(b), the Emergency Application to Enforce the Prior Orders of this Court is hereby GRANTED, and the Order of the Honorable Judith L.A. Friedman dated July 9, 1992, staying the prior order of court dated July 8, 1992, is hereby vacated. The Honorable Judith L.A. Friedman is hereby ordered and directed to order the Prothonotary of Allegheny County to issue forthwith a writ of possession in favor of John E. Steiner against Allen N. Brunwasser for the immediate surrender of possession of premises at issue in this matter.

Execution upon the writ of possession shall be stayed only upon the filing of an appropriate supersedeas bond by Allen N. Brunwasser, in accordance with the requirements of Pennsylvania Rule of Appellate Procedure 1734, in an amount to be set by the Honorable Judge L.A. Friedman at a hearing to be held within five (5) days of the filing and service of any petition for supersedeas. The amount of any such supersedeas bond shall be based upon the fair rental value of the premises in question from August 1, 1983, to date.

Noncompliance with this Order by the lower court shall result in certification of the matter to the Judicial Review Board.

PER CURIAM

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

September 11, 1992

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner vs. Allen N. Brunwasser
Nos. 71, 72, 718 & 1211 Pgh. 1991

Dear Mr. Brunwasser:

The court has entered the following Order on your Motion for Reargument filed in the above captioned matter.

"ORDER OF COURT

The court hereby denies the motion for reargument from the July 2, 1992 order filed by Allen Brunwasser on July 16, 1992.

Date: September 11, 1992

PER CURIAM"

Very truly yours,
Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ksw
cc: Maurice A. Nernberg, Esquire
Honorable J. Friedman

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

September 22, 1992

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner vs. Allen N. Brunwasser
Nos. 71, 72, 718 & 1211 Pgh. 1991

Dear Mr. Brunwasser:

The court has entered the following order on your Motion for PA R.A.P. 123(e) etc. filed in the above captioned matter.

"ORDER OF COURT

AND NOW, to-wit, this 22nd day of September, 1992, upon consideration of Motion for Pa. R.A.P. 123(e). The order of September 10, 1992 was made by one Judge or a clerk and review and reargument en banc plus opportunity to respond to August 18, 1992 motion of appellant and hearing thereon filed by Allen N. Brunwasser in the above matter, the same be and is hereby DENIED.

PER CURIAM"

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ksw
cc: Maurice A. Nernberg, Esquire

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

April 6, 1993

Maurice A. Nernberg, Esquire
301 Smithfield Street
Pittsburgh, PA 15222

IN RE: John W. Steiner vs. Allen N. Brunwasser
Nos. 71, 72, 718 & 1211 Pgh. 1991

Dear Mr. Nernberg:

The Court has entered the following Order on your Motion to Enforce Order in the above-captioned matter:

"ORDER

AND NOW, to-wit, this 5th day of April, 1993, upon consideration of appellant's Motion to enforce Order in the above matter, said motion is hereby GRANTED, and the trial court is directed to proceed to hear testimony pursuant to the Order of this Court entered July 2, 1992 as to counsel fees.

PER CURIAM

Hudock, J. notes his dissent."

A Certified copy of the Order is being forwarded to the court below.

Very truly yours,
Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/kks
cc: Allen N. Brunwasser, Esquire
Honorable Judith Friedman
Honorable R. Stanton Wettick
Honorable Bernard McGowan

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

April 29, 1993

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: John E. Steiner v. Allen N. Brunwasser
No. 0542 W.D. Allocatur Docket 1992

Dear Mr. Brunwasser:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"PER CURIAM:
AND NOW, this 29th day of April, 1993, the Petition for Allowance of Appeal, the Motion to Strike Respondent's Response to Petition for Allowance of Appeal, the Petition to Amend Petition for Allowance of Appeal, and the Motion to Strike and Expunge November 20, 1992 Filing of Respondent are denied."

Very truly yours,

IRMA T. GARDNER
DEPUTY PROTHONOTARY

ITG:cs
cc: Maurice A. Nernberg, Jr., Esquire
Hon. Judith L.A. Friedman

[542 W.D. 1992]

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JOHN E. STEINER, Respondent, vs. ALLEN N. BRUNWASSER	No. 542 W.D. Alloc. Dkt. 1992 Application for Rehearing; Petition for Allowance to Take Discovery; Motion to Strike Response of John E. Steiner to Petitioner's Application for Reconsideration; Motion for Summary Reversal of July 2, 1992, Order of Superior Court and to Strike Respondent's Response of May 17, 1993; Petition to Require Respondent and His Counsel Give Details of Ad Hominem Attacks on Petitioner and Specify How Each Item is Relevant to These Proceedings; Petition to Order Judge Judith L.A. Friedman of the Fifth Judicial District Be Ordered to File Mandated Pa. R.A.P. 1925 Opinion in G.D. 92-12669 and No. 88-10271 so Appeals Presently Pending in the Superior Court can Proceed to Decision

ORDER

PER CURIAM

AND NOW, 20th day of July, 1993, the Application for Rehearing; the Petition for Allowance to Take Discovery; the Motion to Strike Response of John E. Steiner to Petitioner's Application for Reconsideration; the Motion for Summary Reversal of July 2, 1992, Order of Superior Court and to Strike Respondent's Response of May 17, 1993; the Petition to Require Respondent and His Counsel Give Details of Ad Hominem Attacks on Petitioner and Specify How Each Item is Relevant to These Proceedings; and the Petition to Order Judge Judith L.A. Friedman of the Fifth Judicial District be Ordered to File Mandated Pa. R.A.P. 1925 Opinion in G.D. 92-12269 and No. 88-10271 so Appeals Presently Pending in the Superior Court can Proceed to Decision, are denied.

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

October 16, 1993

Maurice A. Nernberg, Esquire
301 Smithfield Street
Pittsburgh, PA 15222

IN RE: JOHN E. STEINER VS. ALLEN N. BRUNWASSER
NOS. 71, 72, 718 & 1211 PGH 1991

Dear Mr. Nernberg:

The court has entered the following order on your Motion to enforce order of April 5, 1993 filed in the above captioned matter.

"ORDER OF COURT

AND NOW, to-wit, this 18th day of October, 1993, upon consideration of appellant's motion and answer by appellee thereto, to enforce order of April 5, 1993, directing the trial court to hear testimony pursuant to the order of this court entered July 2, 1992 as to counsel fees, the trial court is directed to conduct a hearing on counsel fees within thirty (30) days of receipt of this order with an adjudication within sixty (60) days thereafter. The petition to Supreme Court requesting allocatur on the order of April 5th has not been acted upon by that court, therefore, the order of this court is a final order. Further delay in hearing the matter of counsel fees as ordered by this court is unwarranted.*

PER CURIAM"

*This court is deeply concerned about the extraordinary delays in this case occasioned by action and non-action of appellee and various trial judges leading to a breakdown of the administration of justice and implicating

concerns relating to the Rules of Professional Conduct 3.1 and 3.2 and code of Judicial Conduct Canon 3(A) (4) (5).

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

/ksw
cc: Allen N. Brunwasser, Esquire
Honorable Judith Friedman
PS: A certified copy of the above order is being sent to the court below.

[542 W.D. 1992]

IN THE SUPREME COURT OF PENNSYLVANIA - WESTERN DISTRICT

JOHN E. STEINER, Respondent vs. ALLEN N. BRUNWASSER, Petitioner	No. 542 W.D. Alloc. Dkt. 1992 Petition to Vacate Orders of July 20, 1993, and April 29, 1993, in the Supreme Court, the Orders of July 2, 1992 and September 11, 1992, in the Superior Court of Pennsylvania at Nos. 71, 72, 781 and 1211 Pgh. 91 and Remand Case to the Fifth Judicial District at GD88-17478 and No. 10271 of 1988 and to Determine if Any Court had Jurisdiction Because of John E. Steiner's Failure to Join an Indispensable Party Plaintiff and/or He is not the Real Party in Interest in This Litigation

O R D E R

PER CURIAM

AND NOW, this 29th day of October, 1993, the Petition to Vacate Orders of July 20, 1993, and April 29, 1993, in the Supreme Court, the

Orders of July 2, 1992 and September 11, 1992, in the Superior Court of Pennsylvania at Nos. 71, 72, 781 and 1211 PGH. 91 and Remand Case to the Fifth Judicial District at GD 88-17478 and No. 10271 of 1988 and to Determine if Any Court had Jurisdiction Because of John E. Steiner's Failure to Join an Indispensable Party Plaintiff and/or He is not the Real Party in Interest in this Litigation is denied.

It is further ordered that the record herein be remanded to the Court of Common Pleas of Allegheny County.

Further, the Prothonotary of this Court shall accept no further pleadings, petitions, applications, briefs or other documents from Petitioner at this docket number or at No. 222 W.D. Allocatur Docket 1993.

Mr. Justice Larsen did not participate in the disposition of this matter.

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

November 8, 1993

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: JOHN E. STEINER, Appellant
-v- ALLEN N. BRUNWASSER
Nos. 71, 72, 718 and 1211 Pgh. 1991

Dear Mr. Brunwasser:

The Court has entered the following Order on the Motion For Reargument Before Court En Banc For Relief, filed by appellee in the above-captioned matter:

"ORDER OF COURT

AND NOW, to-wit, this 8th day of November, 1993, upon consideration of Allen N. Brunwasser's Motion for Pa. R.A.P. 121 (e) Relief, the same is hereby DENIED. Upon consideration of the Motion for Reargument to the Court En Banc, the same is hereby referred to Central Legal Staff for circulation to the entire court.

PER CURIAM"

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/TDT

cc: Maurice A. Nernberg, Esquire
Honorable Judith L.A. Friedman

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

No. 71, 72, 718, 1211 PITTSBURGH, 1991

JOHN E. STEINER, APPELLANT	)	APPEAL FROM THE ORDERS ENTERED ON 12/5/90 and 12/7/90
vs.	)	AND JUDGMENTS ENTERED ON 3/18/91 BY
ALLEN N. BRUNWASSER	)	HONORABLE JUDITH FRIEDMAN, COURT OF COMMON PLEAS, CIVIL DIVISION OF THE COUNTY OF ALLEGHENY NO. 10271 OF 1988, GD 88-17478

Certified from the Record

NOVEMBER 18, 1993 - PETITION FOR EMERGENCY RELIEF FILED

"ORDER

AND NOW, to-wit, this 19th day of November, 1993, unless the United States District Court for the Western District of Pennsylvania has issued an order enjoining Eugene L. Coon, Sheriff of Allegheny County, Pennsylvania, from executing a Writ of Possession for the premises which are the subject matter of this action, known as Suite 19-D, Gateway Towers, Pittsburgh, Pennsylvania, the said Eugene L. Coon, Sheriff of Allegheny County, Pennsylvania, is directed to execute the Writ of Possession for the above mentioned property, issued by John E. Steiner, forthwith.

PER CURIAM"

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh, PA, this 19th day of November, 1993.

Eleanor R. Valecko
DEPUTY PROTHONOTARY

"PITTSBURGH PRESS, PAGE A-2, NEWS RELEASE"

Montemuro to serve as first senior justice

By Roger Stuart
Post-Gazette Staff Writer

Justice Frank J. Montemuro Jr. will remain on the state Supreme Court for an indefinite term as its first senior justice.

Senior, or retired, judges now serve or have served at every other level of the Pennsylvania judiciary except the Supreme Court.

Such appointments are made by the Supreme Court, which dictates the length of service.

Montemuro's appointment, effective Monday, is aimed at filling the void left by the unprecedented suspension of Justice Rolf Larsen after a state grand jury recommended his prosecution on felony charges of having employees obtain prescription drugs for him.

The Supreme Court made its appointment because Larsen, although suspended, remains an elected member of the court.

Should Larsen resign, die or be impeached, it would be up to the governor to appoint a successor to serve until the next election.

Montemuro, a former judge of the Superior Court and Philadelphia Common Pleas Court, has served on the Supreme Court since November 1992, when Gov. Casey appointed him to succeed Justice James T. McDermott, who died.

Montemuro's appointive term ends Monday, when former Philadelphia District Attorney Ronald D. Castille, who was elected Nov. 2,

begins a full 10-year term.

As the Supreme Court's first senior justice, Montemuro will carry a full caseload plus assume the administrative chore of assessing the need for the Supreme Court to draft formal internal operating procedures.

The high court is the only court in the state without such written rules.

* * *

"PITTSBURGH PRESS, PAGE B-7, NEWS RELEASE"

State court investigator spells out needed reforms

Larsen is expected to reply to the report in the next two weeks.

The grand jury investigation prompted 27 felony charges of fraudulently obtain prescription drugs to be filed against Larsen, who was subsequently suspended without pay and held for court on 16 of the drug charges.

Larsen's attorney, William C. Costopoulos, said he would not negotiate any settlement until the charges - which he says are politically motivated - were dismissed.

Tierney refused during the interview to discuss specific elements of the grand jury investigation, but stressed his desire to see systemic changes in the court to make it more accountable.

He said the court could accomplish many of the changes with a "stroke of the pen." Ticking off a number of such recommendations, Tierney said the court should:

End the practice of not publicly issuing a

detailed budget before delivering it to the Legislature; permit audits of its operations by independent government agencies; and adopt formal personnel procedures for court employees.

Require justices to begin accounting for their undocumented annual expense accounts, pegged at $30,000 for the chief justice and $25,000 for his six fellow justices; and require justices to file more detailed financial information on public disclosure reports, such as complete property holdings.

Make public a variety of now-secret practices. For instance, he said, the court should list the justices who remove themselves from considering appeal petitions.

Publish statewide any openings on boards, commissions and other entities whose appointments are made by the Supreme Court.

Define in writing the court's procedures on such practices as court-ordered "holds," in which a single justice can indefinitely delay action on cases and appointments.

Establish written rules to govern its extraordinary "King's Bench" power, under which the court may take control of any case it chooses from a lower court.

End its practice of justices meeting with lawyers in hotel suites and other places before cases come before the court. Tierney said such conferences were as unusual as the justices' current practice of rarely meeting in the same room with one another to discuss cases.

Tierney said the lack of specific written rules and procedures in several areas of the court's operation allows most of the court's business to be conducted in secret.

"I'm trying to propose some reforms that help us move past the [court's present] culture. One of the best ways...is to let the sun shine on the process. In order to do that, you have to have a [written] process in the first place," he said.

Most of the remaining Supreme Court justices have declined comment so far on the grand jury's court reform proposals. The one justice who has spoken out, Nicholas P. Papadakos of Pittsburgh, agreed with a recommendation for centralizing court operations in Harrisburg, but rebuffed most of the jury's other reform recommendations.

Tierney said the potential for abuse in budgeting and personnel matters on the Supreme Court stemmed from the fact that the court does not adhere to most accounting and auditing practices used by other branches of government. He seemed mystified as to how the court could allow justices to spend $25,000 to $30,000 of taxpayers' money each year with no accountability.

Echoing the grand jury report, he said the court's personnel policies, under which justices can hire, fire and provide any amount in pay raises, are not in line with those of other state agencies.

Tierney said the grand jury was extremely troubled by the secret judicial practices of the court.

He said in allocatur petitions, in which appellants ask the court to hear cases, no one knows who participated in deciding whether to accept or decline a case, because the court makes no mention of votes or recusals.

"First of all, if you recuse, you ought to say it in a public way...because now in the

allocatur process you don't even know...who was in and who was out," Tierney said.

The grand jury report accused Larsen of keeping a list of cases that received preferential treatment. There was no way that anyone could question Larsen's actions, because justices are not required to account publicly for how they vote on whether to hear such cases.

He said the financial disclosure forms used by members of the high court and all other judges in the state were too limited, because they do not require judges to list all holdings, only those where they make a profit.

"I do think there ought to be more...a greatly expanded disclosure form that all the justices file," Tierney said. "right now there are so many loopholes in that form, that there are lots of things you can't tell."

He also said there is no requirement that judges across the state list all the boards they are on.

"There's nothing wrong...for a judge to be on the board of a hospital. But you ought to know that. I ought to know that. The litigants ought to know that. That ought to be written down someplace."

Tierney said the current process of allowing justices absolute power to put "holds" on cases or appointments and keep them from moving forward, without stating a reason, can be abused easily.

The grand jury report recommended that the court consider putting time limits on "holds" and also have some sort of written accountability for them. Tierney endorsed that.

Tierney was amazed that members of the Supreme Court rarely meet together, other than when hearing cases in public.

He said the investigation showed that the justices usually conduct business by telephone and fax while justices are all over the country. He said the court would be more effective if its members met head to head more frequently.

On the other hand, Tierney likened the practice of some justices meeting with litigants on the night before court appearances to the recently completed World Series.

"I think the people of Pennsylvania, and certainly of Philadelphia, would have been somewhat upset if they found that the umpires went out drinking with the Toronto Blue Jays manager before the World Series started...I think they would be angry and upset."

[Picture]

James E. Tierney, right, joins Edward S.G. Dennis, a former deputy U.S. attorney general, at the Nov. 6 news conference discussing the case against state Supreme Court Justice Rolf Larsen.

* * *

Significant News Release
in The Pittsburgh Press

Larsen's staff to be
laid off Dec. 1

By Roger Stuart
and Bill Moushey
Post-Gazette Staff Writers

The 12-members of state Supreme Court Justice Rolf Larsen's staff have been told they will be laid off indefinitely starting Dec. 1.

Larsen and his staff were suspended with pay Oct. 28, the day a state grand jury recommended that Larsen be prosecuted for fraudulently obtaining prescription drugs.

Now, staff members are being notified that they will be laid off because of a lack of work, state Court Administrator Nancy Sobolevitch said. She said they had been encouraged to seek employment elsewhere, because no one knew how long Larsen would be suspended.

Larsen not only is facing criminal charges, but also possible impeachment proceedings in the state Legislature.

"It's unfortunate for the people involved," Sobolevitch said of the layoff notice. "But it's all we can do because public money is involved."

Larsen has the largest staff of law clerks of any Supreme Court justice, with six full-time and four part-time clerks.

The clerks, together with two secretaries, cost taxpayers $489,000 in salary and benefits annually, Sobolevitch said.

Larsen's staff members' salaries ranged last year from $78,358 for Andrew M. Schifino, his chief administrative law clerk, to $8,474 for part-time law clerks Robert Barker and Tchad Marie Heil.

Supreme Court, U.S.
FILED
FEB 16 1994
OFFICE OF THE CLERK

(2)

No. 93-1202

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALLEN N. BRUNWASSER,

Petitioner

vs.

JOHN E. STEINER,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA AND THE SUPREME COURT OF PENNSYLVANIA

John E. Steiner,
Respondent

Maurice A. Nernberg

NERNBERG & COONEY
301 Smithfield Street
Pittsburgh, PA 15222-2277
(412) 232-0334
Pa. I.D. No. 00127
Firm No. 331

16 pp

COUNTER STATEMENT OF QUESTION PRESENTED

THERE IS NO LEGITIMATE FEDERAL QUESTION PRESENTED.

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STATEMENT OF THE CASE

It is difficult to begin because of the long tortured history preceding the case which has been brought to this court for review. It is also impossible to identify an issue of constitutional dimension arising from this case or any matters relevant to this Court.

An explanation of the appendix (by Petitioner) will be helpful to this court:

Appendix, Page 8, the Opinion of the Honorable Anthony J. Martin. The matter before Judge Martin was an action at law for money damages and ejectment. As may be seen, the decision was in the form of a decree in equity. Pennsylvania law distinguishes between actions in law and those in equity (Pa. R.C.P. 1001 and 1501). Moreover, Pennsylvania law provides

for an adjudication in equity (Pa. R.C.P. 1517) to be in the form of (1) a statement of the issues, (2) a statement of findings of fact necessary to support the conclusions, (3) a discussion of the legal questions and (4) a decree nisi. Following the decree nisi, post trial procedures are allowed. (Pa. R.C.P. 227.1) Judge Martin's decision did not follow the required procedures.

Even prior to the trial before Judge Martin, the Plaintiff, Steiner, had moved for judgment on the pleadings and for summary judgment on several occasions. The motions were never addressed.

Appendix, Page 19, the Opinion of Judge Friedman. In Hera v. McCormick, Pa. Super. 625 A.2d 682, 687 (1993), the Pennsylvania Superior Court affirmed that one seeking to introduce a document must comply with the best evidence rule. Here,

the Petitioner did not even approach the requirements (a review of the Answer filed by the Petitioner will disclose), and as held by the Superior Court, the Petitioner pleaded a "lease ending March 31, 1994, if he determines to rely on said lease"[1]. More importantly, Judge Friedman failed to address any of the issues raised in Steiner's post trial motions. In fact, one of Steiner's grounds for appeal was that Judge Friedman did not read the transcript and pleadings. If she had, she would have recognized that Petitioner never averred the existence of a written lease (a requirement under the Pennsylvania statute

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[1] Pennsylvania is a fact pleading state and its Rules require that if claims or defenses are based upon a writing, it must be attached to the pleading. By not pleading the lease, Petitioner did not attach it, thus preventing the defenses available under the statute of frauds. In essence, Petitioner tried to litigate by a trick.

of frauds) and never exercised the purported option under the non existent lease.

Petitioner's refusal (it was not a technical failure, because it was intentional) to allege the existence of a written lease was sufficient grounds to have dismissed the action at the outset. The only injustice is that Steiner had to wait five (5) years to obtain possession of his property.

Appendix, Page 31, Judge Friedman's order denying counsel fees. It was ridiculous to suggest that the claim had been either decided by Judge Martin or abandoned. Fortunately, the Superior Court recognized that Steiner never abandoned his request. And the fees were properly assessed.

Appendix, Page 35, the Supplemental Opinion by Judge Friedman. Here, she

acknowledges that Steiner viewed her decision as an abandonment of judicial responsibility.

Appendix, Page 39, the Order denying the Motion to Quash. This was Petitioner's motion, based on Steiner's failure to reproduce the entire record. The contents of the record on appeal are governed by Pennsylvania Rules of Appellate Procedure, 2152, et seq. Petitioner, in violation of those rules demanded that the entire record be reproduced. It was a meaningless record filled with unnecessary papers by Petitioner. The trial itself, for possession of a residential condominium unit took five (5) days, an ungodly time, again, because of the Petitioner's rambling. The only reason for demanding the entire record, in light of the Pennsylvania Appellate Rules was to burden Steiner with more cost.

Appendix, Page 44, the Opinion of the Superior Court. This was simply a finding that the lower court erred in not granting judgment on the pleadings or summary judgment.

Following the Superior Court decision are a plethora of orders, some of which reflect the Superior Court's retaking jurisdiction to require the trial judges to follow its earlier holding and some of which deny Petitioner's additional motions, too numerous to list. The orders prohibiting further filings were due to Petitioner's constant filing of motions without any apparent purpose except to retain the record in the appellate courts to prevent the Sheriff from executing on the final order for possession and money.

As of this date Petitioner is out of Unit 19D.

ARGUMENT AND SUMMARY OF ARGUMENT

This should have been a simple action for ejectment and for rent due. Steiner purchased Unit 19D, a condominium in a building known as Gateway Towers. At the time of the purchase, Steiner also obtained an assignment of all of the Seller's rights to rent from the Petitioner, who had lived in the unit since about 1963, and since 1978 without paying rent. Upon purchase, Steiner sought to have Petitioner ejected. That is all there is to this case. A review of the facts will indicate that Petitioner not only had no right to possession, but abused legal processes to remain as long as he could without paying rent. Finding a constitutional dimension to this case is impossible.

While Petitioner accuses this counsel of ad hominem attacks on him, Steiner's Motion for Reconsideration as to Certain Issues Raised on Appeal (page 12 of Petitioner's brief), outline the intimidating methods of the Petitioner and explain Steiner's concern for a fair trial. As evidenced by the record, that did not occur. It took the appellate courts years to provide Steiner with the relief to which he was entitled.

A recitation of the facts in response to Petitioner's statement would be a disservice. The record is void as to any support for the allegations made. More to the point, even if he had had a lease, the nonpayment of rent would have justified the relief sought.

In the meantime, John E. Steiner was denied the use of the condominium he purchased since 1988 and has not even

received one dollar of rent for it.

The long and short of this case is that it reflects a lawyer's abuses of the legal process over a period of over fifteen (15) years to obtain free rent. Petitioner has placed a bond in the form of cash equivalents, in an amount of approximately $250,000. Yet, his claim is he owes no rent on the premises in which he resided for fifteen (15) years because they are "uninhabitable." It should not have taken the court five (5) years to decide that issue. Unfortunately, Petitioner is doing what he said he would do at the outset of this litigation, "take John Steiner's economic hide."

The issues that Petitioner seeks to bring before this court are issues arising out of numerous filings that he made to the Superior Court and the Supreme Court after having lost the case, none of which

affected the finality of the Orders referenced. All other orders related to enforcement of the earlier decisions. Petitioner did everything he could to avoid moving out of Unit 19D and never paid any rent.

In fact, hidden in his brief is reference to Pa. R.A.P. 2572, referencing the time for remanding the record. Petitioner had convinced the Allegheny County Sheriff that execution on the order of ejectment could not be issued so long as the record was held in the appellate courts. Thus, he filed motion after motion, including a now remanded Petition for Removal to the United States District Court for the Western District of Pennsylvania, filed under Civil Action No. 93-1934, to continue to delay the eventual eviction. This Petition was for the very same purpose, as evidenced in filings

before the Pennsylvania Supreme Court, and for that reason, no further filings were permitted.[2]

To go through the litany that has been raised in the Petition, is to further abuse the process that brought us before this court in the first place. This case has no constitutional dimension whatsoever. Petitioner had, as he acknowledges, a "long" trial before a lower court. The record of that proceeding was before the Superior Court. One reviewing that record need go no further to determine that Petitioner has abused the legal process at its every turn.

---

[2] Interestingly, the prohibition against filing of meritless papers by a litigious was recently approved in a matter before the Second Circuit in In Re Martin V. Trigona, 9 F.3d 226(CA 2, 1993).

CONCLUSION

WHEREFORE, it is prayed that this Honorable Court reject the Petition for Writ of Certiorari. A Motion pursuant to Rule 42.2 will be submitted following rejection of this Petition.

Respectfully submitted,

NERNBERG & COONEY

By: _____
Maurice A. Nernberg
Attorneys for Respondent